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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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GENERAL ACCOUNTING OFFICE

4 CFR Part 21

Bid Protest Regulations

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule makes a number of changes in the regulations governing consideration of bid protests by the General Account Office. 4 CFR Part 21. The changes are intended to improve the fairness and efficiency of the bid protest process. GAO's bid protest regulations implement section 3551–3556 of Title 31, United States Code (as added by section 2741 of the Competition in Contracting Act of 1984 (Pub. L. No. 98–369)).

DATES: Effective December 8, 1987, for protests filed on or after January 15, 1988.

ADDRESSES: For complete copies of the amended regulation contact: John Brosnan, Group Managing Attorney, General Accounting Office, by telephone (202) 275–9740 or write to U.S. General Accounting Office, Office of the General Counsel, 441 G Street NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: John Brosnan, Group Managing Attorney, General Accounting Office, telephone (202) 275–9740.

SUPPLEMENTARY INFORMATION: In March of this year the General Accounting Office (GAO) published for public comment proposed amendments to its bid protest regulations (52 FR 9664, March 26, 1987). The agency received 25 comments in response to the March 26 notice, some of which expressed objections to various provisions of the proposal, particularly the provisions concerning protester access to agency documents relevant to a protest and the provisions providing for a fact-finding conference when necessary to resolve factual disputes that arise in a protest.

As a result of these comments, this final rule incorporates a number of changes to the March 26 proposal. The comments received by GAO and its response to each of them are discussed in detail below. GAO also intends, after the amendments made by this rule have been in effect for 1 year, to solicit public comments concerning the impact of the amendments on the bid protest process and to consider, in light of the comments it receives and its own experience, whether any modification of the amendments would be appropriate.

The Comments

Twenty-five comments were received on the proposed regulation amendments. The following is a discussion of the principal issues raised in the comments and the General Accounting Office's (GAO) response.

One commenter, noting that § 21.0(a) has been amended to show that its definition of "interested party" is only for purposes of filing a protest, suggested that GAO add a definition of "interested party" for purposes of intervention or participation in a protest filed by another party.

In response, GAO has added a new § 21.0(b) defining an "interested party" for the purpose of participating in a protest as an awardee, if award has been made, or all bidders or offerors who appear to have a substantial prospect of receiving award if the protest is denied. Section 21.0 paragraphs (b), (c), (d), (e), and (f) are redesignated § 21.0 paragraphs (c), (d), (e), (f), and (g), respectively.

Several contracting agency comments objected to § 21.1(f), which now specifically provides that protests shall not be dismissed for failure to furnish a copy of the protest to designated contracting agency personnel within 1 day after filing at GAO (§ 21.1(d)), where the contracting officer has actual knowledge of the basis of protest, or the agency is not prejudiced by the protester's noncompliance in the preparation of its report. One commenter believed prejudice to the agency should be presumed in case of a delay in the notice given the 25-day limit on report preparation, and that the protester should have the burden of showing cause why the requirement was not complied with. Several commenters suggested that GAO furnish all protesters telephonic or written notice to emphasize the importance of compliance with this requirement.

After considering these comments, GAO had decided to retain the language of the proposed revision. This language essentially codifies GAO's approach in applying the 1-day notice requirement under GAO's current regulations, and thus makes no practical change. Rather than automatically presuming prejudice to the agency, GAO believes it is preferable to proceed on a case-by-case basis, based on actual prejudice to the agency, such as where notice is delayed significantly beyond 1 day. GAO still does not believe that a protester's failure to comply immediately with the requirement warrants automatic dismissal.

Section 21.3(a) requires all parties to furnish copies of their submissions to the contracting agency and other participating interested parties. One commenter believed it would be helpful to require the contracting agency to provide in its notice of protest to bidders or offerors in line for the award the names and addresses of all other such bidders and offerors, so that each party responding to the notice can furnish copies to all other parties.

GAO believes such a requirement would be impracticable since at the time the agency issues the notices of protest, it is not yet known which bidders and offerors will choose to participate in the protest. There currently is no such requirement and GAO has not experienced significant difficulties in parties obtaining the submissions of other participating interested parties.

Section 21.3(k) contains a new sentence referring to the scheduled due date of the agency report, "as specified in the acknowledgment of protest furnished by the General Accounting Office." One commenter pointed out that because GAO's current regulations do not provide for an "acknowledgment of protest" to the protester (although as a matter of practice GAO does send such an acknowledgment), this reference to an acknowledgment letter should be expressly provided for in the regulations. In response to this comment, GAO has added language to § 21.3(a) to provide that GAO will mail an acknowledgment of the protest to the protester.

One commenter noted that while the supplementary information accompanying GAO's proposed

regulation amendments states that under new § 21.3(1) parties may request permission from GAO to submit additional statements, the language of § 21.3(1) does not state this.

Consequently, GAO has revised § 21.3(1) to specifically provide for the submission of additional statements only if the party requests to do so and GAO determines them to be necessary to the fair resolution of the protest.

GAO received a large number of comments on new § 21.3 paragraphs (c), (d), (e), (f), (g), and (h), which were added to enable protesters to obtain access to documents relevant to the protest. Several contracting agencies have argued that (1) GAO does not have the authority to provide documents to protesters or interested parties, (2) these provisions are inconsistent with the Freedom of Information Act (FOIA), 5 U.S.C. 552, and (3) these provisions may be unconstitutional. GAO does not agree.

The authority to obtain documents and provide them to parties participating in a protest is contained in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. 3553(b)(2) and (f) and 3555 (a) and (b) (Supp. III 1985). CICA requires that contracting agencies provide GAO with a protest report, including all relevant documents, and that the agencies provide parties to a protest with relevant documents, which the party is otherwise authorized by law to receive and would not give the party a competitive advantage (including the protest report) within such guidelines that GAO may set forth. CICA also establishes GAO's authority to prescribe necessary protest procedures and states that GAO may use its audit authority under Chapter 7 of Title 31 to verify parties' assertions. GAO believes that a reasonable reading of these portions of CICA provides the authority for GAO to establish a protest procedure whereby protesters and participating interested parties may obtain nonprivileged documents which are relevant to the protest issues.

GAO believes that this procedure is consistent with FOIA. CICA at 31 U.S.C. 3553(f) states that any document provided to a party not give that party a competitive advantage and requires that the party would be otherwise authorized by law to receive the document to be released. New § 21.3(d)(2) reflects these restrictions. In GAO's view, 31 U.S.C. 3553(f) restricts the release of documents to those that a particular party would be entitled to receive under FOIA. GAO intends to so limit parties' access to agency documents. In determining whether a party is entitled to specific documents, GAO will give due consideration to the agency's determination as to their releasability under FOIA. On the other hand, GAO believes that CICA envisions that those documents that would be releasable pursuant to FOIA would be made available to parties to a protest in accordance with GAO timeframes and procedures. GAO believes that there is no constitutional bar to the implementation of these procedures.

Some contracting agencies have also complained that the new access-to-documents procedures are not necessary, overly legalistic and unfair because they do not provide for agency access to protester documents. GAO wishes to keep the protest process as simple and expeditious as possible. Nevertheless, it has in recent years received persistent complaints from protesters that contracting agencies have denied them access to the relevant documents necessary to successfully pursue a protest. GAO concluded from its own experience that there was in fact a problem and has established what it believes is a relatively simple, fair, and effective process for dealing with document access. GAO is not aware of any corresponding agency problems with obtaining protester documents. The agencies have not provided any convincing argument for the need for such documents. Hence, GAO has no basis at this time to implement such a procedure.

Several commenters suggested that GAO control the release of documents containing proprietary or sensitive information by the issuance of protective orders limiting the release of the information to a protester's or an interested party's counsel for use only in connection with the protest. A protective order might be a feasible method of dealing with the release of sensitive information in a court proceeding; it is not appropriate under GAO's procedures—which are designed to afford protesters a simple and inexpensive protest forum. GAO has no practical way of enforcing such an order. In the absence of an effective enforcement mechanism, GAO would not be able to assure the contracting agencies that the restriction placed on their sensitive information would be effective.

Section 21.3(c) provides that a protester, within 5 days of filing a protest, may make a written request for documents it regards as relevant to the protest issues raised. Some contracting agencies have suggested that GAO should ensure that only documents that are in fact relevant should be produced and that the request should be made concurrently with the filing of the protest. In response, § 21.3(c) has been revised to limit a document request to those documents that GAO determines are relevant rather than just those "considered" relevant by the protester. Section 21.3(d)(2) has been correspondingly changed to state specifically that only documents relevant to the protest issues need be provided. Section 21.3(c) has been further amended to require the document request to be filed concurrently with the protest. GAO has made these changes because it feels that it must be able to control document requests by limiting them to documents it ultimately decides are relevant and that the agency should be given its full 25 days reporting time allowed by CICA to produce such documents.

Some contracting agencies also contended that the § 21.3(c) request for documents be eliminated in favor of a single provision similar to that at § 21.3(e) which provides that a protester may further request documents if the existence or relevance of the documents first becomes evident from the agency protest report. These commenters would limit the opportunity for the protester to request documents to after receipt of the agency report and would extend the agency's response time from 5 to 10 days after receipt of the document request. GAO still believes that the best time for the protester first to request documents is at the time the protest is filed, as currently provided for under § 21.3(c), so that the documents can be provided along with the report in accordance with the CICA deadlines. During this time period the agency will already be involved in gathering relevant documents in preparing the report. If GAO were to eliminate § 21.3(c), all requests would have to be processed after the report was received thereby significantly delaying the issuance of the decision. As it now stands only those documents whose relevance or existence first becomes clear after receipt of the report may be requested at that time under § 21.3(e).

Two commenters have suggested that interested parties should be allowed to participate actively in the document production process set out in § 21.3 by either requesting documents themselves or by being permitted to comment when their documents are the subject of a protester's document request. GAO feels that the interests of such parties in obtaining documents are adequately addressed in § 21.3, which generally permits them to obtain copies of documents furnished to the protester. GAO believes that parties who wish to restrict the release of information

contained in documents which are in the custody of the agency should express their views to the agency which can then inform GAO that the documents should not be released. In addition, the regulations do not prohibit a party from making its views known to GAO regarding the release of its documents.

In response to several comments, § 21.3(d)(2) has been amended to require specifically that requested documents not provided to the protester or interested party be furnished to GAO. Section 21.3(e) has also been clarified to insure that, in responding to requests for documents after the protest report is issued, contracting agencies identify the documents not furnished to the protester or the interested party. These changes clarify GAO's original intent.

Several comments were received regarding the new language in § 21.5(a)(1) requiring the agency to be represented at GAO conferences on the merits by individuals knowledgeable about the protest subject matter. One commenter proposed that GAO provide that unfavorable inferences will be drawn where the agency is not represented by knowledgeable individuals. Other commenters pointed out that all parties at the conference should be required to be represented by knowledgeable individuals.

Although the new language in § 21.5(a)(1) was prompted by GAO's experience that contracting agencies frequently are not represented at conferences by people familiar with all of the protest issues, GAO agrees that, as a fundamental principle, all parties at a conference should meet this requirement. The section has been modified to provide that all parties, not only those representing the contracting agency, must have knowledgeable representation at conferences on the merits. GAO believes it is self-evident that it may draw negative inferences where a party's failure to have knowledgeable individuals at the conference precludes GAO's thorough consideration of an issue, and that there is no need for a specific provision to this effect.

Section 21.5(b) outlines the procedures for a fact-finding conference to resolve factual disputes that cannot be resolved on the written record.

Many commenters questioned how often such a conference would be granted in view of the language in § 21.5(b) that such conferences are considered exceptional and will be granted sparingly. Some of those commenters objected to the inclusion of the language that the conferences would be granted sparingly on the ground that the regulation already specifies that the conferences are to be held at GAO's discretion. The frequency of fact finding conferences is difficult to predict since this is a new procedure to assist in resolving bid protests. However, GAO has, in response to comments from contracting agencies, revised § 21.5(b) to make clear that not every factual dispute will require such a conference, but only those factual disputes whose resolution is essential to deciding the protest. In view of this more explicit standard for granting conferences, GAO has removed the statement that fact finding conferences are exceptional and will be granted sparingly.

Several commenters believed the protester and the procuring agency should be able to specify particular witnesses to be produced for the conference. GAO has not revised the regulations in this regard and the final determination as to the appropriate witnesses remains with GAO. Nothing, however, in the regulations precludes the parties from submitting a list of proposed witnesses for GAO's consideration.

Several commenters objected to § 21.5(b)(2), which provides each party the opportunity to question opposing witnesses. The commenters argued that each party should be able to question all witnesses, including their own, thereby permitting both direct and cross-examination. GAO has changed § 21.5(b)(2) to so provide.

The majority of commenters were opposed to tape recording the conference. They argued that a written transcript would be more appropriate. The commenters noted that a tape recording would be difficult to work from and asserted that a written transcript would aid the GAO hearing official in making the finding of facts. Based on these comments GAO has amended § 21.5(b)(2) to provide for a transcript of the proceedings. Each party will be required to pay for its copy of the transcript. The use of a transcript and the attendant delay in obtaining and forwarding it to the parties necessitated a change in the time limit for written comments on the conference. Accordingly, § 21.5(b)(3) has been amended to permit the submission of comments within 3 days of receipt of the transcript.

Several commenters were concerned about the expense involved and the distance that may have to be traveled to produce certain witnesses, especially in connection with protests of overseas procurements. They also felt that 5 days notice of the conference, as provided for in § 21.5(b)(1), may be too short a time period to produce witnesses. Many of these commenters suggested that a telephone conference would be appropriate in these situations.

The purpose of the fact finding conference is to provide for live testimony concerning the disputed facts and to allow GAO to consider the demeanor of the witnesses. This generally cannot be accomplished by a telephone conference. While there is nothing in the regulations that prohibits a telephonic fact finding conference, GAO does not believe that it would be appropriate in most cases, and will not list it in the regulations as an alternate procedure. Further, the 5-day notice in § 21.5(b)(1) is a minimum time period and GAO may grant more time as the circumstances warrant.

Numerous commenters requested that GAO use the Federal Rules of Evidence in conducting fact finding conferences, and that senior GAO officials with specific qualifications to be listed in the regulations conduct these conferences. Section 21.5(b)(2) has been amended to state that evidence will be admitted in the sound discretion of the GAO official. While the GAO official will look to the Federal Rules of Evidence for guidance, GAO will not be bound by such rules in keeping with its view that the conferences should be as informal as is reasonable and appropriate. Also, while GAO will use its senior officials to conduct fact finding conferences, GAO will determine the qualifications of such individuals and sees no need to list the qualifications in the regulations.

One commenter suggested that GAO make it clear in the regulations whether participating interested parties are entitled to participate in fact finding conferences. GAO believes it is unnecessary to modify the regulations in this regard. The regulations do not prohibit participating interested parties from attending or taking part in fact finding conferences. It is GAO's intention that participating interested parties ordinarily will be invited to attend fact finding conferences, and that they may be permitted to take an active part in the conference, depending on the circumstances of the protest. GAO currently permits their participation in conferences on the merits.

Two contracting agencies commented that they believe § 21.6(e) should not be modified as proposed. This section currently states that: (1) The costs of filing and pursuing a protest, including attorneys' fees, will be awarded only where the protester has been unreasonably excluded from the procurement; and (2) bid and proposal preparation costs will be awarded only where the protester was unreasonably excluded and there is no other

appropriate remedy. As modified, § 21.6(e) provides no specific standards for cost recovery. The commenters prefer the current language and suggest that elimination of those standards could lead to the filing of frivolous protests. The commenters further suggest that, if GAO is intent on making this change, GAO should adopt the standards for awarding attorneys' fees, and the limitations on those fees, provided for under the Equal Access to Justice Act.

As GAO stated in the supplemental information accompanying the proposed regulation amendments, it believes, based on its experience with the current regulations, that the costs of filing and purusing a protest generally should be granted whenever a protest is sustained based on more than some technical violation of statute or regulation, whether or not other remedies also are appropriate. Thus, while we recognize that contracting agencies would prefer the current more restrictive standard, we continue to believe it is preferable to eliminate these standards and decide the issue of costs on a case-by-case basis. We do not agree that an increase in frivolous protests will result from this change since it should be evident to potential protesters that a meritless protest will not be sustained and will have no better chance of resulting in recovery of costs than currently is the case. To the extent the change may result in a greater likelihood of a protest being filed, GAO notes that the awarding of attorneys' fees is intended to encourage firms to protest perceived violations of statutes and regulations under a "private attorneys general" theory.

GAO is not inclined to base the quantum of attorneys' fees allowed on the standards in the Equal Access to Justice Act. As indicated, GAO believes it is preferable to decide these issues on a case-by-case basis. This is not to say, on the other hand, that GAO will not refer to the Act for guidance in specific cases.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Government contracts.

PART 21—[AMENDED]

4 CFR Part 21, General Accounting Office—Bid Protest Regulations, is amended as follows:

1. The authority citation for 4 CFR Part 21 continues to read as follows:

Authority: 31 U.S.C. 3551–3556.

§ 21.0 [Amended]

2. In § 21.0, paragraph (a) is amended by adding "for the purposes of filing a protest," following "Interested party".

3. In § 21.0, paragraphs (b), (c), (d) and (e) are redesignated paragraphs (c), (d), (e) and (f), respectively.

4. In § 21.0, a new paragraph (b) is added to read as follows:

* * * * *

(b) "Interested party" for the purpose of participation in a protest means an awardee if the award has been made, or if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.

* * * * *

5. In § 21.0, paragraph (g) is added to read as follows:

* * * * * *

(g) The term "filed" regarding protests to the General Accounting Office means receipt of the protest and other submissions in the General Accounting Office.

§ 21.1 [Amended]

6. In § 21.1, paragraph (b) is amended by adding "441 G Street, NW.," following "General Accounting Office".

7. In § 21.1, paragraphs (e) and (f) are revised to read as follows:

* * * * *

(e) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged, and clearly state legally sufficient grounds of protest. Protests of different procurements should be separately filed. If requested, the General Accounting Office will time/date stamp and return a copy of the protest provided by the protester.

(f) A protest filed with the General Accounting Office may be dismissed for failure to comply with any of the requirements of this section. However, a protest shall not be dismissed for failure to comply with paragraph (d) of this section where the contracting officer has actual knowledge of the basis of protest or the agency, in the preparation of its report, is not otherwise prejudiced by the protester's noncompliance.

§ 21.2 [Amended]

8. In § 21.2, paragraph (b) is removed and paragraph (c) is redesignated paragraph (b).

§ 21.3 [Amended]

9. In § 21.3, paragraph (a) is amended by inserting at the end of the first sentence, "and also mail an acknowledgment of the protest to the protester" and by removing the last sentence and substituting "All parties shall furnish copies of any such communications to the contracting agency and to other participating interested parties."

10. In § 21.3 paragraphs (c), (d), (e), (f) and (g) are redesignated as paragraphs (i), (j), (k), (m), and (n).

11. In § 21.3 newly redesignated paragraph (i) is amended by inserting in the second sentence between "of" and "relevant" the word "all" and by removing "Pub. L. 98–369" and substituting "31 U.S.C. 3553(f) (Supp. III 1985)," in the third sentence. The following new paragraphs (c) through (h) are added:

* * * * *

(c) A protester may request in writing specific documents it considers relevant to its protest grounds, including but also in addition to the documents described in § 21.3(i). The request must be filed with the General Accounting Office and with the individual or location referred to in § 21.1(d) concurrent with the filing of the protest. A request that fails to meet one or more of the requirements of this paragraph may be dismissed.

(d) Where a request for documents is submitted pursuant to paragraph (c) of this section, those documents shall be furnished as follows:

(1) Except as provided below, the contracting agency shall furnish copies of the requested documents along with the copy of the agency report to the protester and to interested parties who have responded to the notice in § 21.3(a).

(2) Requested documents that are not relevant to the protest or would give the protester or other interested party a competitive advantage or that the protester of the interested party is not otherwise authorized by law to receive shall not be furnished to the protester or to the interested party. Requested documents not furnished to the protester or the interested party shall be identified and the reason for not furnishing the documents stated. In any event, all requested documents shall be furnished to the General Accounting Office.

(e) The protester may subsequently request additional documents if the existence or relevance of such documents first becomes evident from the agency report. Any request for such documents must be filed with the General Accounting Office and with the contracting agency within 2 days of the protester's receipt of the agency report. The contracting agency must respond within 5 days by filing with the General Accounting Office the requested

documents, and by identifying the documents not to be furnished to the protester or the interested party, and stating the reasons for not furnishing them.

(f) The General Accounting Office shall decide within 5 days of the receipt of the contracting agency's report under paragraph (d) of this section or its response under paragraph (e) of this section whether any documents withheld from the protester or other interested party shall be released to the protester or other interested party. If the General Accounting Office determines that withheld documents should be released, it will furnish the documents to the party or parties entitled to receive them or advise the agency to do so.

(g) When withheld documents are so released, protester's comments on the agency report shall be filed within 7 days of its receipt of the released documents. If the General Accounting Office determines that the documents were properly withheld, the protester's comments are due within 10 days of its receipt of the agency report as under § 21.3(k).

(h) In the event any contracting agency fails to comply with a decision that a document should be furnished to a protester or other interested party, the General Accounting Office may use any authority available under Chapter 7 of Title 31, United States Code, to provide the document to the protester or other interested party or may draw an inference regarding the content of the withheld document unfavorable to the contracting agency.

12. In § 21.3, newly redesignated paragraph (k) is amended by removing the number "7" whenever it appears, and substituting the number "10." The paragraph is further amended by inserting in the second sentence between "a" and "statement," the word "written" and by inserting between the second and third sentence the following: "The General Accounting Office will assume the protester received the agency report no later than the scheduled due date as specified in the acknowledgment of protest furnished by the General Accounting Office, unless otherwise advised by the protester."

13. In § 21.3, newly redesignated paragraph (m) is amended by removing the reference to "§ 21.2(c)" and substituting "§ 21.2(b)." Further, the following new paragraph (l) is added:

* * * * *

(l) The General Accounting Office may at its discretion permit the submission of additional statements by the parties, including the contracting agency, if the party requests to do so and the General Accounting Office determines such statements are necessary for the fair resolution of the protest. The General Accounting Office may at its discretion permit the submission of statements relevant to the protest from parties other than interested parties as defined in paragraphs (a) and (b) in § 21.0 such as federal agencies other than the contracting agency or trade associations.

* * * * *

14. In § 21.3, newly redesignated paragraph (m)(6) is amended by removing "Pub. L. 98–369" and substituting "40 U.S.C. 759(h) (Supp. III 1985)."

15. In § 21.3, newly redesignated paragraph (m)(8) is amended by removing "Pub. L. 98–369" and substituting "31 U.S.C. 3551–3556 (Supp. III 1985)."

§ 21.4 [Amended]

16. In § 21.4, the introductory text is amended by removing "Pub. L. 98–369" and substituting "31 U.S.C. 3553(c) and (d) (Supp. III 1985)."

17. In § 21.5, the section heading is revised by removing "Conference" and substituting "Conferences" to read as follows:

§ 21.5 Conferences.

* * * * *

18. In § 21.5, paragraph (b) is redesignated paragraph (a)(1) and amended by removing "no later than 5 days" and substituting "as soon as practicable" and by inserting "participating" before "interested" in the first sentence. The paragraph is further amended by adding the following penultimate sentence: "All parties should be represented by individuals who are knowledgeable about the subject matter of the protest."

19. In § 21.5, paragraph (c) is redesignated paragraph (a)(2) and amended by removing "§ 21.3(e)" and substituting "§ 21.3(k)." The paragraph is further amended by inserting "participating" before "interested" in the second sentence, by inserting "including the contracting agency," before "within" and deleting the number "5" and substituting the number "7" in the same sentence.

20. In § 21.5, paragraph (d) is redesignated paragraph (a)(3). Paragraph (e) is redesignated paragraph (a)(4) and amended by inserting "written" before "statement" in the first sentence, and by removing the number "5" and substituting the number "7" and by removing "paragraph (c)" and substituting "paragraph (a)(2)" in the same sentence. The paragraph is further amended by removing "§ 21.3(e)" in the last sentence and substituting "§ 21.3(k)."

21. In § 21.5, a new paragraph (b) is added to read as follows:

* * * * *

(b) A fact finding conference may, at the sole discretion of the General Accounting Office, be held at the request of any party or on the initiative of the General Accounting Office. The fact finding conference may be held in order to resolve a specific factual dispute essential to the resolution of the protest which cannot be otherwise resolved on the written record.

(1) A fact finding conference may be held at any time during the protest proceeding. The General Accounting Office will notify all parties in writing at least 5 days before such a conference is scheduled and inform them of the factual issue or issues to be resolved and of any specific witness to be produced.

(2) The fact finding conference will be held at the General Accounting Office before a General Accounting Office official. Witnesses will testify under oath or affirmation, and a transcript of the proceeding will be made. Each party must pay for its copy of the transcript and will be given the opportunity to question the witnesses. Fact finding conferences shall be as informal as is reasonable and appropriate under the circumstances. Evidence shall be admitted in the sound discretion of the presiding General Accounting Office official.

(3) Each party may submit written comments to the General Accounting Office on the matter raised in the conference within 3 days of receipt of the transcript. Relevant findings of fact by the General Accounting Office hearing official shall be part of the bid protest decision.

(4) If any party refuses to attend such a conference, or a witness fails to attend or fails to answer a relevant question, the General Accounting Office may draw an inference unfavorable to the party refusing to cooperate.

§ 21.6 [Amended]

22. In § 21.6, paragraph (e) is removed and paragraph (f) is redesignated paragraph (e).

§ 21.8 [Amended]

23. In § 21.8, a new paragraph (e) is added to read as follows:

* * * * *

(e) Where circumstances demonstrate that the case is no longer suitable for resolution within 45 calendar days, the

General Accounting Office may establish new deadlines within the constraints established in § 21.7 (a) and (c) regarding the issuance of a decision and in § 21.3 (i) and (j) regarding the submission of the agency report.

§ 21.9 [Amended]

24. In § 21.9, paragraph (b) is amended by removing "§ 21.3(c)" and substituting "§ 21.3(i)" and by removing "§ 21.3(e) and substituting "§ 21.3(k)."

§ 21.11 [Amended]

25. In § 21.11, paragraph (a) is amended by removing "or by the District of Columbia".

26. In § 21.11, paragraph (b) is amended by removing Pub. L. 98–369 and substituting "31 U.S.C. 3553 (c) and (d) (Supp. III 1985)."

§ 21.12 [Amended]

27. In § 21.12, paragraph (c) is amended by removing "Pub. L. 98–369" and substituting "31 U.S.C. 3553 (c) and (d) (Supp. III 1985)."

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 87–27921 Filed 12–7–87; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0623]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions): (1) To increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(C)), from $36.7 million to $40.5 million of net transaction accounts; (2) to increase the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent, as required by section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)), from $2.9 million to $3.2 million of reservable liabilities; and (3) to increase the reporting cutoff level which is used to separate weekly reporters from quarterly reporters from $28.6 million to $30.0 million of total deposits and other reservable liabilities.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452–3778), Legal Division, or Pat Mahoney, Economist (202/452–3827), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act requires each depository institution to maintain with the Federal Reserve System reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for each depository institution's total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million. Section 19(b)(2) further provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts for all depository institutions determined as of June 30 of each year.

Currently, the amount of the low reserve tranche on transaction accounts is $36.7 million. The growth in the total net transaction accounts of all depository institutions from June 30, 1986, to June 30, 1987, was 13.0 percent (from $518.1 billion to $585.4 billion). In accordance with section 19(b)(2), the Board is amending Regulation D to increase the amount of the low reserve tranche for transaction accounts for 1987 by $3.8 million to $40.5 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities[1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (*i.e.*, transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. The change in the amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions determined as of June 30 each year. The growth in total reservable liabilities of all depository institutions for June 30, 1986, to June 30, 1987, was 12.6 percent (from $1,046.2 billion to $1,177.9 billion). In accordance with section 19(b)(11), the Board is amending Regulation D to increase the amount of the reserve requirement exemption for 1987 by $0.3 million to $3.2 million.

As a result, the effect of these amendments is to modify the low reserve tranche (which is $40.5 million, effective December 29, 1987) to apply a zero percent reserve requirement on the first $3.2 million of transaction accounts (effective December 29, 1987) and a three percent reserve requirement on the remainder of the low reserve tranche. Any amount of this zero percent reserve requirement tranche remaining after applying it to transaction accounts will then be applied to nonpersonal time deposits with maturities of less than 1½ years or to Euroccurency liabilities, both of which are subject to a reserve requirement ratio of three percent.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective starting with the reserve computation period beginning on (Tuesday) December 29, 1987, and with the corresponding reserve maintenance periods beginning (Thursday) December 31, 1987, for net transaction accounts, and on (Thursday) January 28, 1987, for other reservable liabilities. For institutions that report quarterly, the tranche adjustment and the exemption will be effective with the computation period beginning on (Tuesday) December 15, 1987, and with the reserve maintenance period beginning (Thursday) January 14, 1988. In addition, all entities currently submitting Form FR 2900 will continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act.

established a deposit reporting cutoff level (currently $28.6 million in total deposits and other reservable liabilities) to determine deposit reporting frequency. In March of 1985, the Board decided to index this reporting cutoff level equal to 80 percent of the annual rate of increase of total deposits and other reservable liabilities.[2] Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, and all other institutions with reservable liabilities in excess of the exemption level amount prescribed by section 19(b)(11) of the Federal Reserve Act and with at least $28.6 million in total deposits and other reservable liabilities are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). Depository institutions with reservable liabilities in excess of the exemption level amount but with total deposits and other reservable liabilities less than $28.6 million may file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950) on the same frequency. The reporting cutoff level is also used to determine whether an institution with reservable liabilities at or below the exemption level amount must file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) or the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a).

From June 30, 1986, to June 30, 1987, total deposits and other reservable liabilities grew 6.0 percent, from $3.1 trillion to $3.3 trillion. This results in an increase in the cutoff level distinguishing weekly from quarterly reporters of $1.4 million from the current $28.6 million to $30.0 million. Based on the indexation of the reserve requirement exemption, the cutoff level for total deposits and other reservable liabilities above which reports of deposits must be filed rises $0.3 million to $3.2 million. Institutions with total deposits and other reservable liabilities below $3.2 million are excused from reporting if their deposits can be estimated from other sources. The $30.0 million cutoff level for weekly reports and the $3.2 million level threshold for reporting will be used in the second quarter 1988 deposits report screening process to identify weekly and quarterly reporters and the adjustments will be made when the new deposit reporting panels are implemented in September 1988.

Finally, the Board may require a depository institution to report on a weekly basis regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

[2] Total deposits and other reservable liabilities is the sum of gross transaction deposits, savings accounts, and time deposits plus the sum of reservable obligations of affiliates; ineligible acceptance liabilities, and net Eurocurrency liabilities.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board believes that notice and public participation is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, Banking, Currency, Federal Reserve System, Penalties, reporting, and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for 12 CFR Part 204 is revised to read as follows:

Authority: Secs. 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

§ 204.9 [Amended]

2. In § 204.9—Reserve Requirement Ratios, paragraphs (a)(1) and (a)(2) are revised to read as follows:

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts [1]:	
$0 to $40.5 million	3 percent of amount.
Over $40.5 million	$1,215,000 plus 12% of amount over $40.5 million.
Nonpersonal time deposits:	
By original maturity (or notice period):	
Less than 1½ years	3 percent.
1½ years or more	0 percent.
Eurocurrency liabilities	3 percent.

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or Agreement Corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section, nonpersonal time deposits, or Eurocurrency liabilities or any combination thereof not in excess of $3.2 million determined in accordance with § 204.3(a)(3) of this Part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 2, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-28072 Filed 12-7-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 87-ANE-34; Amdt. 39-5766]

Airworthiness Directives; Rolls-Royce plc (R-R) RB211-535C and -535E4 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires replacement or rework of certain fuel tube assemblies to new tube assembly configurations, the incorporation of new clips to eliminate fretting, and an initial and repetitive inspection of the fuel tubes until incorporation of the new hardware. The compliance schedules for the above modifications are dependent upon the Boeing 757 aircraft status under the Master Minimum Equipment List (MMEL) and aircraft operational constraints. The AD is needed to prevent fretting and cracking of the fuel tubes that can result in fuel leaks with substantial fuel quantity loss.

DATES: *Effective:* December 8, 1987.

Compliance Schedule—As prescribed in the body of the AD.

Comments for inclusion in the docket must be received on or before January 22, 1988.

Incorporation by Reference—Approved by the Director of the Federal Register as of December 8, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87-ANE-34, 12 New England Executive Park, Burlington, Massachusetts 01803. or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87-ANE-34".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable engine manufacturer's service bulletins (SB's) may be obtained from Rolls-Royce plc, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England.

A copy of the SB's is contained in Rules Docket Number 87-ANE-34, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been seven fuel leak events involving the low pressure (LP) fuel filter to high pressure (HP) pump tube. In two of those events, a substantial fuel loss had occurred in flight. The fuel leaks occurred as a result of frettage and cracking, thereby compromising the integrity of the fuel tube. Fuel tube cracking results from vibratory excitation which initiates cracks in stress concentration areas on the tube, and areas of frettage resulting from insufficient tube clamping. The manufacturer has identified a redesigned fuel tube which deletes the electrical grounding lug and associated stress concentration at the braze fillet on tubes installed in RB211-535E4 engines. Also, the manufacturer has identified a redesigned fuel tube incorporating an insert with an integral electrical grounding lug which eliminates the associated stress concentration at the braze fillet on tubes installed in RB211-535C engines. Redesigned clips have also been provided which eliminate chafing and subsequent fuel leakage.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires replacement of the fuel tube, Part Number (P/N) UL14975, with a new part or rework of the fuel tube to the new fuel tube configuration, P/N UL16692, for the RB211-535E4 engines. It also requires replacement of the fuel tube, P/N LK78017, with a new part or rework of the fuel tube to the new fuel tube configuration, P/N UL22067, for the RB211-535C engines. In addition, the AD requires replacement of the existing clips with new design clips. Also, this AD requires an initial and repetitive inspection for fuel tube frettage and cracking, and the one time interim replacement of the installed clips with new clips of the old design, until the new design clips are installed. Incorporation of the new or reworked fuel tubes and redesigned clips removes the respective inspection requirements.

The compliance schedules are dependent upon the aircraft status under the MMEL and aircraft operational constraints which impact the flight crew's ability to identify fuel losses due to leaks in the fuel system.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-34". The postcard will be date/time stamped and returned to the commenter.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a

final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation, if filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls-Royce: Applies to Rolls-Royce plc (R-R) RB211-535C and -535E4 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent low pressure (LP) fuel filter to high pressure (HP) pump tube frettage and cracking that can lead to fuel leaks and substantial fuel quantity loss, accomplish the following:

(a) For the RB211-535E4 engines installed on Boeing 757 aircraft and operated in any of the following configurations: (1) With the Fuel Quantity Indication System (FQIS) inoperative under the provisions specified in the Master Minimum Equipment List (MMEL), Item 28-41-1; (2) with one of the Fuel Quantity Processor (FQP) Channels inoperative under the provisions specified in the MMEL Item 28-41-2; (3) with both Flight Management Computer (FMC) Systems inoperative under the provisions specified in the MMEL, Item 34-61-1; or (4) with the FQIS functional, both FQP Channels functional, and at least one FMC System functional, but operating without the provisions of Boeing Operations Manual Bulletin (OMB) Number 87-7, dated August 20, 1987, accomplish the following:

(1) Replace fuel tube Part Number (P/N) UL14975, prior to further flight, with the new fuel tube configuration, P/N UL16692, in accordance with the Accomplishment Instructions contained in R-R Service Bulletin (SB) RB.211-73-8195, dated May 2, 1986.

(2) Visually inspect fuel tube P/N UL16692 for frettage each day of operation, in accordance with paragraph D(2) "RB211-535E4 engines—L.P. fuel tubes" of the Accomplishment Instructions contained in R-R SB RB.211-73-8438, Revision 1, dated July 31, 1987, until installation of clips, R-R P/N 1010792, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8457, Revision 1, dated August 7, 1987.

(3) Remove from service and replace with serviceable parts, prior to further flight, fuel tube assemblies found to be cracked or fretted.

(b) For the RB211-535C engines installed on Boeing 757 aircraft and operated in any of the following configurations: (1) With the Fuel Quantity Indication System (FQIS) inoperative under the provisions specified in the MMEL, Item 28-41-1; (2) with one of the Fuel Quantity Processor (FQP) Channels inoperative under the provisions specified in the MMEL, Item 28-41-2; (3) with both Flight Management Computer (FMC) Systems inoperative under the provisions specified in the MMEL, Item 34-61-1; or (4) with the FQIS functional, both FQP Channels functional, and at least one FMC System functional, but operating without the provisions of Boeing Operations Manual Bulletin (OMB) Number 87-7, dated August 20, 1987, accomplish the following:

(1) Replace fuel tube P/N LK78017, prior to further flight, with the new fuel tube configuration, P/N UL22067, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8502, dated August 28, 1987.

(2) Visually inspect fuel tube P/N UL22067 for frettage each day of operation, in accordance with paragraph D(2) "RB211-535C engines—L.P. fuel tubes" of the Accomplishment Instructions contained in R-R SB RB.211-73-8438, Revision 1, dated July 31, 1987, until installation of clip, R-R P/N 1011161, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8534, dated September 18, 1987.

(3) Remove from service and replace with serviceable parts, prior to further flight, fuel tube assemblies found to be cracked or fretted.

(c) For the RB211-535E4 engines installed on Boeing 757 aircraft operated with the FQIS functional, both FQP Channels functional, at least one FMC System functional, and in accordance with the provisions of Boeing OMB Number 87-7, dated August 20, 1987, accomplish the following:

(1) Dye penetrant inspect (red or fluorescent dye) fuel tube P/N UL14975 for cracks not later than the next "A" check after the effective date of this AD, in accordance with paragraph D(1) of the Accomplishment Instructions contained in R-R SB RB.211-73-8438, Revision 1, dated July 31, 1987.

(2) Reinspect for cracks in accordance with the requirements of paragraph (c)(1) above, thereafter, at intervals not to exceed 1,000 hours in service, until replacement of fuel tube, P/N UL14975, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8195, dated May 2, 1986.

(3) Visually inspect fuel tubes P/N UL14975 and P/N UL16692 for frettage, not later than the next "A" check after the effective date of this AD, in accordance with paragraph D(2) "RB211-535E4 engines—L.P. fuel tubes" of the Accomplishment Instructions contained in R-R SB RB.211-73-8438, Revision 1, dated July 31, 1987. Replace clips, R-R P/N 3504226 or R-R P/N 3504225, removed during the inspection, with new clips, R-R P/N 3504226 or R-R P/N 3504225, or with clips, R-R P/N 1010792, prior to reinstallation.

(4) Reinspect for frettage in accordance with the requirements of paragraph (c)(3) above, thereafter, at intervals not to exceed "A" check, fuel tubes not incorporating clips, R-R P/N 1010792, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8457, Revision 1, dated August 7, 1987, until incorporation of clips, R-R P/N 1010792.

(5) Remove from service and replace with serviceable parts, prior to further flight, fuel tube assemblies found to be cracked or fretted.

(d) For the RB211-535C engines installed on Boeing 757 aircraft operated with the FQIS functional, both FQP Channels functional, at least one FMC System functional, and in accordance with the provisions of Boeing OMB Number 87-7, dated August 20, 1987, accomplish the following:

(1) Dye penetrant inspect (red or fluorescent dye) fuel tube P/N LK78017 for cracks not later than the next "A" check after the effective date of this AD, in accordance with paragraph D(1) of the Accomplishment Instructions contained in R-R SB RB.211-73-8438, Revision 1, dated July 31, 1987.

(2) Reinspect for cracks in accordance with the requirements of paragraph (d)(1) above, thereafter, at intervals not to exceed "A" check, until replacement of fuel tube, P/N UL78017, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8502, dated August 28, 1987.

(3) Visually inspect fuel tubes P/N UL78017 and P/N UL22067 for frettage not later than the next "A" check after the effective date of this AD, in accordance with paragraph D(2) "RB211-535C engines—L.P. fuel tubes" of the Accomplishment Instructions contained in R-R SB RB.211-73-8438, Revision 1, dated July 31, 1987. Replace clip, R-R P/N 3504234 or R-R P/N 3504233, removed during the inspection, with new clip, R-R P/N 3504234 or R-R P/N 3504233, or with clip, R-R P/N 1011161, prior to reinstallation.

(4) Reinspect for frettage in accordance with the requirements of paragraph (d)(3) above, thereafter, at intervals not to exceed "A" check, fuel tubes not incorporating clip, R-R P/N 1011161, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8534, dated September 18, 1987, until incorporation of clip, R-R P/N 1011161.

(5) Remove from service and replace with serviceable parts, prior to further flight, fuel tube assemblies found to be cracked or fretted.

(e) For RB211-535E4 engines, accomplish the following on or before March 31, 1988:

(1) Replace fuel tube P/N UL14975 with the new fuel tube configuration, P/N UL16692, in accordance with the Accomplishment Instructions, contained in R-R SB RB.211-73-8195, dated May 2, 1986.

(2) Replace R-R P/N 3504226 or R-R P/N 3504225 clips with R-R P/N 1010792 clips on fuel tube P/N UL16692, in accordance with

the Accomplishment Instructions contained in R-R SB RB.211-73-8457, Revision 1, dated August 7, 1987.

(f) For RB211-535C engines, accomplish the following on or before March 31, 1988:

(1) Replace fuel tube P/N LK78017 with the new fuel tube configuration, P/N UL22067, in accordance with Accomplishment Instructions contained in R-R SB RB.211-73-8502, dated August 28, 1987.

(2) Replace R-R P/N 3504234 or R-R P/N 3504233 clip with R-R P/N 1011161 clip on fuel tube P/N UL22067, in accordance with the Accomplishment Instructions contained in R-R SB RB.211-73-8534, dated September 18, 1987.

Note: Accomplishment of the requirements of R-R SB RB211-72-7437 (interim clip configuration) is not considered an alternative to the requirements of R-R SB RB.211-73-8457 or SB RB.211-73-8534.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

Rolls-Royce Service Bulletins (SB's) RB.211-73-8195, dated May 2, 1986, RB.211-73-8438, Revision 1, dated July 31, 1987, RB.211-73-8457, Revision 1, dated August 7, 1987, RB.211-73-8502, dated August 28, 1987, and RB.211-73-8534, dated September 18, 1987, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the engine manufacturer's SB's may obtain copies upon request to Rolls-Royce plc, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England.

These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87-ANE-34, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on December 8, 1987.

Issued in Burlington, Massachusetts, on October 29, 1987.

Monte R. Belger,

Acting Director, New England Region.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-72]

Staff Accounting Bulletin No. 72

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views concerning the appropriate income statement classification of changes by utilities for disallowed costs or the costs of abandoned plants.

DATE: November 10, 1987.

FOR FURTHER INFORMATION CONTACT: John A. Heyman, Office of the Chief Accountant (202/272-2130); or Howard P. Hodges, Jr., Division of Corporation Finance (202/272-2553), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

November 10, 1987.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 72 to the table found in Subpart B.

Staff Accounting Bulletin No. 72

The staff hereby adds Section E to Topic 10. Topic 10-E discusses the staff's view concerning the appropriate income statement classification of charges by utilities for disallowed costs or the costs of abandoned plants.

Topic 10: Utility Companies

* * * * *

E. Classification of Charges for Abandonments and Disallowances

* * * * *

Facts: A public utility company abandons the construction of a plant and, under the provisions of Statement of Financial Accounting Standards ("SFAS") No. 90, mut change a portion of the costs of the abandoned plant to expense.[1] Also, the utility determines that it is probable that certain costs of a recently completed plant will be disallowed, and charges those costs to expense as required by SFAS No. 90.

Question 1: May such charges for abandonments and disallowances be reported as extraordinary items in the statement of income?

Interpretive Response: No. The staff does not believe that such charges meet the requirements of Accounting Principles Board Opinion ("APB") No. 30 that an item be both unusual and infrequent to be classified as an extraordinary item. Accordingly, the public utility was advised by the staff that such charges should be reported as a component of income from continuing operations, separately presented, if material.[2]

Paragraph 20 of APB No. 30 indicates that to be unusual, an item must "possess a high degree of abnormality and be of a type clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the entity, taking into account the environment in which the entity operates." Similarly, that paragraph indicates that, to be infrequent, an event should "not reasonably be expected to recur in the foreseeable future."

Electric utilities operate under a franchise that requires them to furnish adequate supplies of electricity for their service area. That undertaking requires utilities to continually forecast the future demand for electricity, and the costs to be incurred in constructing the plants necessary to meet that demand. Abandonments and disallowances result from the failure of demand to

[1] Paragraph 3 of Statement of Financial Accounting Standards ("SFAS") No. 90 requires that costs of abandoned plants in excess of the present value of the future revenues expected to be provided to recover any allowable costs be charged to expense in the period that the abandonment becomes probable. Also, paragraph 7 of SFAS No. 90 requires that disallowed costs for recently completed plants be charged to expense when the disallowance becomes probable and can be reasonably estimated.

[2] Additionally, the registrant was reminded that paragraph 26 of APB No. 30 provides that items which are not reported as extraordinary should not be reported on the income statement net of income taxes or in any manner that implies that they are similar to extraordinary items.

reach projected levels and/or plant construction costs that exceed anticipated amounts. Neither event qualifies as being both unusual and infrequent in the environment in which electric utilities operate.

Accordingly, the staff believes that charges for abandonments and disallowances under SFAS No. 90 should not be presented as extraordinary items.[3]

Facts: A public utility intends to initially apply SFAS No. 90 by restating the financial statements of prior periods. [4] Included in the results of operations for those prior periods are charges for unrecoverable costs which were required under SFAS No. 71. [5] Those charges were classified as extraordinary items. The application of SFAS No. 90 to those prior periods may change the amount and/or timing of those charges.

Question 2: May a utility that adopts SFAS No. 90 by restating the financial statements for prior periods, and which had previously classified a charge under SFAS No. 71 for disallowed costs as an extraordinary item, continue, after restatement, to classify the charges relating to that disallowance as an extraordinary item?

Interpretive Response: No. The staff believes that these charges should be classified as a component of income from continuing operations irrespective of whether they occur in a period to which SFAS No. 90 has been retroactively applied or a period which follows the initial adoption of the standard. While the staff is aware that some utilities have, in the past, classified a charge under SFAS No. 71 for disallowed costs as an extraordinary item, the staff believes that the continuation of that treatment for charges occurring in periods to which SFAS No. 90 is retroactively applied is inappropriate. [6] The treatment of a charge under the previous accounting standard does not, in the staff's view, justify affording disparate treatment to identical items under the same accounting standard based solely on whether the period in question preceded or followed the date SFAS No. 90 was adopted. The charge in the timing and/or amount of the charge resulting from the retroactive application of SFAS No. 90 represents the effect of applying a different accounting standard rather than the effect of a change in the estimate of recoverable costs used in applying the requirement of SFAS No. 71.

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[3] The staff also notes that paragraphs 3 and 7 of SFAS No. 90, in requiring that such costs be "recognized as a loss," do not specify extraordinary item treatment. The staff believes that it has generally been the FASB's practice to affirmatively require extraordinary item treatment when it believes that it is appropriate for charges or credits to income specifically required by a provision of a statement.

[4] SFAS No. 90 is effective for fiscal years beginning after December 15, 1987. Earlier application, and retroactive application by restating the financial statements of prior periods, is encouraged.

[5] SFAS No. 71 required that a utility charge to expense any costs which, without considering a return on investment, would not be recoverable through their inclusion as allowable costs in future periods. This provision of SFAS No. 71 was amended by SFAS No. 90.

[6] Additionally, the staff would encourage, but not require, the reclassification of such charges to continuing operations when they appear in income statements for periods prior to the adoption of SFAS No. 90 that are presented together with income statements that include similar charges in periods in which SFAS No. 90 has been applied.

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 351

[Department of the Treasury Circular Public Debt Series No. 1-80, 2nd Revision]

Bureau of the Public Debt; Offering of United States Savings Bonds, Series EE

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's offering circular for United States Savings Bonds, Series EE, provides at § 351.5(a), that bonds may be purchased through deductions taken from the pay of employees of organizations which maintain payroll savings plans. The bond denominations available for purchase are set out in § 351.2(b). In order to improve the cost-effectiveness of the Savings Bond Program, the offering is amended to discontinue the offering of $50 and $75 denomination bonds to new enrollees in payroll savings plans, as well as to current participants who are not purchasing bonds of those denominations prior to the effective date. The minimum denomination for a new bond authorization after the effective date will be $100, issued at a purchase price of $50.

DATE: Effective February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV 26101, (304) 420-6505.

SUPPLEMENTARY INFORMATION: Treasury studies have shown that the issuance of $50 Series EE bonds through payroll deduction plans is not cost-effective, and the issuance of $75 Series EE bonds is only marginally so. While interest costs to the Treasury for savings bonds held for short terms are comparatively low, the borrowing costs are driven upwards by associated administrative overhead. Effective borrowing rates to the Treasury, taking into account issuing and paying agent fees, etc., run as high as 20.5 percent for $50 bonds and 14.9 percent for $75 bonds when such bonds are redeemed after reaching the minimum holding period of six months.

In order to enhance the cost-effectiveness of the Savings Bond Program, $50 and $75 denomination bonds will not be available through payroll savings plans under new bond authorizations. The change will not affect individuals who are buying payroll bonds at the $50 or $75 denomination prior to February 1, 1988. Such purchasers will be able to request changes in address, inscription or allotment amount for their existing purchase authorization, but they will not be permitted to authorize any additional registrations of $50 or $75 bonds. The change will also not affect $50 and $75 denomination bonds purchased over-the-counter, as such issues are generally held for longer periods and have proved more cost-effective.

Procedural Requirements

This notice is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

The notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Part 351

Bonds, Government securities.

Dated: November 30, 1987.

Gerald Murphy,

Fiscal Assistant Secretary.

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for 31 CFR Part 351 is revised to read as follows:

Authority: 49 Stat. 21, as amended; Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 940; Pub. L. 97-452, section 1 (6), (7), Jan. 12, 1983, 96 Stat. 2467, 2468 (31 U.S.C. 3105); 5 U.S.C. 301.

2. Paragraph (a) of § 351.5 is amended by the addition at the end thereof of two sentences. As revised paragraph (a) reads as follows:

§ 351.5 [Amended]

(a) *Payroll plans:* Bonds may be purchased through deductions from the pay of employees of organizations which maintain payroll savings plans. The bonds must be issued by an authorized issuing agent, which may be the employer organization or a financial institution or Federal Reserve Bank or Branch servicing that organization. Effective February 1, 1988, bonds may be purchased only in denominations of $100 or higher, except that employees who on such date are purchasing $50 or $75 through payroll deductions will be permitted to continue the purchases. Although these employees may increase the amount of their payroll deductions, or change the inscriptions on their existing authorizations, no new authorizations for additional registrations in the $50 and $75 denominations may be made.

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CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: Part 1900 of Title 32 CFR was last published in full text in the **Federal Register** on 12 January 1983 (Vol. 48, No. 8, p. 1293). Since then, there have been several substantive amendments and more recently, proposed amendments were published in the **Federal Register** of 18 May 1987 (Vol. 52, No. 95, p. 18579) affecting those portions of the regulation relating to fees as required by the Freedom of Information Reform Act (FOIRA) of 1986. For the benefit of the public, Part 1900 is being republished with all current amendments and revisions, including a number of error corrections and changes in phraseology as well as technical and/or administrative changes to clarify or more accurately reflect applicable procedures.

EFFECTIVE DATE: December 8, 1987.

ADDRESS: Lee Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, Telephone: (703) 351-2083.

SUPPLEMENTARY INFORMATION: The policies and procedures of the Central Intelligence Agency (CIA or Agency) for handling requests for CIA records under the Freedom of Information Act (FOIA) or Executive Order 12356 are published in 32 CFR Part 1900. This final rule, in part, hereby amends those portions of the regulation concerned with fees charged for records services in response to FOIA requests to be consistent with the provisions of the FOIRA and is issued subsequent to formal public notice and comment. During the comment period, written comments were received from a number of individual journalists and organizations. These comments, which were generally critical of the Office of Management and Budget (OMB) and Department of Justice (DOJ) guidelines on fee regulations under FOIRA, were considered by the Agency in adopting these regulations. For example, the definitions in the proposed regulations of "commercial use," "representative of the news media," "educational institution," and "freelance journalist" were argued to be too restrictive. In addition, the fee waiver guidelines were also argued to be too restrictive. The comments were duly considered in drafting the final rule published herein. To accomplish the purposes of the FOIRA it will be necessary to modify §§ 1900.3 (Definitions) and 1900.25 (Fees for records services). The amended fee schedule reflects recommended adjustments for agency-wide charges that are permitted by law and the remaining charges are based on the government-wide schedule. The increases in fee schedule charges more accurately reflect current, direct costs. In addition, the FOIRA specifies two basic requirements to qualify for a waiver or reduction of chargeable fees. This amendment also sets forth the factors which will be used in making such determinations.

This final rule also amends the remaining sections of Part 1900 by incorporating into the regulation a number of error corrections and changes in phraseology as well as a number of technical and/or administrative changes to clarify or reflect more accurately applicable procedures and practices. It has been determined that invitation of public comment on these changes to the Agency's implementing regulations prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of the Administrative Procedures Act, 5 U.S.C. 553. Interested persons, however, are invited to comment in writing on these changes. All written comments received will be considered in making subsequent amendments or revisions to these regulations. Written comments should be addressed to: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Lastly, it has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public. In addition, this rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 1900

Freedom of information.

Accordingly, 32 CFR Part 1900 in its entirety is revised and reads as follows:

PART 1900—PUBLIC ACCESS TO DOCUMENTS AND RECORDS AND DECLASSIFICATION REQUESTS

Sec.

General

Requesting Records

Processing Freedom of Information and Executive Order Communications

Actions on Requests

Appeals

Miscellaneous

Authority: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Freedom of Information Act, as amended; CIA Information Act of 1984; and E. O. 12356.

General

§ 1900.1 Purpose and authority.

The part is issued under the authority of and in order to implement: section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); the Freedom of Information Act, as amended (5 U.S.C. 552); the CIA Information Act of 1984 (50 U.S.C. 431); and Executive Order 12356 (3 CFR Part 166 (1983). It prescribes procedures for:

(a) Requesting records pursuant to the Freedom of Information Act;

(b) Requesting the declassification of documents pursuant to Executive Order 12356;

(c) Filing an administrative appeal of a denial of a mandatory review request under Executive Order 12356 or an initial request under the Freedom of Information Act;

(d) The prompt and expeditious processing of such requests and appeals; and

(e) Requesting estimates and advice prior to actually requesting records, thus affording protection against unanticipated fees.

This part is also designed to assist Central Intelligence Agency management at all appropriate echelons to allocate resources to perform the functions, duties and responsibilities of the Central Intelligence Agency prescribed by and pursuant to law, including in particular those situations where it is deemed necessary to choose among conflicting requirements, duties and responsibilities.

§ 1900.3 Definitions.

For the purpose of this part, the following terms have the meanings indicated:

(a) "Agency" includes any executive department, military department or other establishment or entity included in the definition of agency in subsection 552(e) of Title 5 of the United States Code;

(b) "Coordinator" means the Central Intelligence Agency Information and Privacy Coordinator;

(c) "Expression of interest" means a written communication submitted by a potential requester pursuant to § 1900.33 to indicate an interest in requesting records;

(d) "Freedom of Information Act" means section 552 of Title 5 of the United States Code, as amended;

(e) "Executive Order" means Executive Order 12356 (3 CFR Part 166 (1983));

(f) "Potential requester" means a person, organization or other entity who submits an expression of interest in accordance with § 1900.33;

(g) "Records," with reference to records of the Central Intelligence Agency, includes all papers, maps, photographs, machine readable records, and other documentary materials regardless of physical form or characteristics made or received by the Central Intelligence Agency in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the Central Intelligence Agency as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Agency or because of the informational value of data contained therein. But the term does not include:

(1) Index, filing and museum documents made or acquired and preserved solely for reference, indexing, filing or exhibition purposes;

(2) Routing and transmittal sheets and notes and filing instructions and notes which do not also include information, comment or statement of substance or policy;

(3) Books, newspapers, magazines, and similar publications and clippings and excerpts from any such publications;

(4) Records not originated by the CIA and subject to the continued control of the originator (such records will be referred to the originator for a disposition pursuant to § 1900.43(c)).

(h) "Records of interest" means records which are responsive to expression of interest or of a request;

(i) "Work days" means calendar days other than Saturdays and Sundays and legal public holidays.

(j) "Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and reviewing in the case of commercial requesters) documents to respond to a FOIA request. Direct costs include, for example, the current salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(k) "Search" includes all time spent looking for material that is responsive to a request utilizing available indices and other finding aids. The term search is predicated on the concept of reasonable search as contrasted to research which is neither required nor authorized by the FOIA. Efforts will be made to ensure that search for material is done in the most efficient and least expensive manner so as to minimize costs for both the Agency and the requester. "Search" for the purpose of determining whether a document is responsive is distinguished from "review" where the objective is to determine whether any of the responsive material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(l) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk) among others. The copy provided must be in a form that is reasonably usable by requesters.

(m) "Review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (n) of this section) to determine whether any portion of any document located must be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to remove or obliterate any material which is exempt from disclosure and otherwise preparing them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n) "Commercial use" request refers to a request in which the disclosure sought is primarily in the commercial interest of the requester. It is a request from or on behalf of one who seeks information primarily for the use or purpose that furthers the commercial, trade, income or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester is properly included in this category, the Agency will consider and may draw reasonable inferences from the identity and activities of the requester as well as the use to which the requester will put the documents requested.

(o) "Educational institution" refers to a United States preschool, public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an

institution of professional education and an institution of vocational education which operates a degree-granting, accredited program or programs of scholarly research in recognized fields of study. The criteria to be met to be included in this category, for the purposes of fee waivers, are not satisfied simply by showing that the request is for a library or other records repository. Such requests, like those of other requesters, will be analyzed to identify the particular person who will actually use the requested information in a scholarly or other analytic work and then disseminate it to the general public.

(p) "Non-commercial scientific institution" refers to an institution in the United States that is not operated on a "commercial" basis as that term is referenced in paragraph (n) of this section and which is operated solely for the purpose of conducting natural life or physical sciences research the results of which are not intended to promote any particular product or industry.

(q) "Representatives of the news media" refers to any person actively gathering news for a United States entity that is organized and operated to publish or broadcast news in the United States to the general public. The term "news" means information that is about current events or that would be of current interest to the general public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of printed periodicals (but only in those instances when they qualify as disseminators of "news") who make their products available for purchase or subscription by the general public and whose products are, in fact, received by a significant element of the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication record may also be relevant evidence of the requester's status.

§ 1900.5 Organization; requests and submittals.

The headquarters of the Central Intelligence Agency is located in Fairfax County, VA. Functions are channeled and determined by regular chain-of-command procedures. Except as provided by this regulation, there are no formal or informal procedural requirements regarding public access to Agency records. Requests and other submittals should be addressed to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Requesting Records

§ 1900.11 Freedom of Information Act and Executive Order 12356 communications; requirements as to form.

(a) Any communication to the CIA or to the Director of Central Intelligence under the Freedom of Information Act or Executive Order 12356 should be addressed to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505. This address should appear on the envelope or other folder or package in which the communication is transmitted. It should also be included as the addressee of the letter or other communication or be clearly set forth in the text of the communication.

(b) Any request for records under the Freedom of Information Act (§ 1900.35), expression of interest in requesting records (§ 1900.35) or request for declassification of records under Executive Order 12356 (§ 1900.35) shall be in writing and shall be addressed as prescribed by § 1900.11(a). The Coordinator may, but need not, waive the requirements as to address.

(c) The request or expression of interest shall reasonably describe the records of interest and, in the case of mandatory declassification review, requests shall identify the documents(s) with specificity such as by National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number.

(d) Any request or communications to an agency other than the Central Intelligence Agency which concern documents, records or information originated by the CIA and referred to the CIA, shall be considered a Freedom of Information request to the CIA for that referred document as of date of receipt by the CIA of the referral, and shall be processed pursuant to regulations.

§ 1900.21 Identification of persons requesting information under the provisions of Executive Order 12356.

Pursuant to section 3.4(a)(1) of Executive Order 12356, a mandatory declassification review request can be made only by a United States citizen or permanent resident alien, a federal agency or a State or local government. This Agency shall require sufficient identifying information from the requester to authenticate the requester's qualifications.

§ 1900.23 Pre-request option: Estimates of charges.

(a) In order to avoid being faced with unanticipated sizeable charges, interested persons and entities may defer the submission of requests for records and first submit a written request, in accordance with the procedures prescribed by § 1900.11 for an estimate of charges likely to be incurred if the records are requested.

(b) Notice is hereby given that a requester may be liable for the payment of search charges, in accordance with the fee schedule and provisions of § 1900.25, even if search for requested records locates no such records and even if some or all of requested records which are located are denied the requester under one or more exemptions of the Freedom of Information Act or Executive Order 12356.

§ 1900.25 Fees for records services.

(a) Search, review, and duplication fees will be charged in accordance with the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. To the extent possible, the most efficient and least costly methods will be used to comply with requests for documents made under the FOIA. Records will be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States government and is not primarily in the commerical interest of the requester. The Coordinator shall consider the following factors in making his determination:

(1) Whether the subject of the requested records concerns the operations or activities of the United States government; and, if so,

(2) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States government operations or activities; and, if so,

(3) Whether the disclosure of the requested documents will contribute to public understanding of United States government operations or activities; and, if so,

(4) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States government operations and activities; and,

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(6) Whether the disclosure is primarily in the commercial interest of the requester.

(b) The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. In addition, fees shall not be charged where they would amount, in the aggregate, for a request or for a series of related requests, to less than $6.00.

(c) Denials of requests for fee waivers or reductions may be appealed by writing to the Chairman of the Information Review Committee, via the Coordinator. Requests for fee waivers or reductions or appeals of such decisions will not be considered after a requester has given his commitment to pay fees and/or processing costs have been incurred by the CIA.

(d) In order to protect the requester and the Agency from large, unexpected fees, when the anticipated charges will amount to more than $25.00 and the requester has not indicated his willingness to pay applicable fees, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for this commitment to pay all reasonable search and duplication (and when appropriate, review) fees. At his option, the requester may indicate in advance a dollar limitation to the fees he is prepared to pay. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure and guarantee payment thereof. The request shall be cancelled after 60 days if no response is received.

(e) In those cases where the Coordinator estimates that the fees will exceed $250.00 and the requester has no history of payment, an advance deposit of up to 100 percent of the estimated fees will be required. In all cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(f) Except for requests that are for a commercial use, the Agency will not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information he actually seeks, for the purpose of avoiding or reducing applicable fees. When the Coordinator reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of smaller requests solely for the purpose of evading the assessment of fees, the Coordinator may aggregate any such requests and charge accordingly.

(g) The schedule of fees for services performed in responding to requests for CIA records is established as follows:

(1) For each one quarter hour, or fraction therof, spent by non-professional personnel in searching for a record, $2.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, $4.50;

(3) For each one quarter hour, or fraction thereof, spent by professional personnel in reviewing a record in response to a FOIA request, which is primarily commercial, $4.50;

(4) For each on-line computer search, $11.00;

(5) For each off-line (batch) computer search of Central Reference Files, $27.00;

(6) For all other off-line computer searches of Agency files, $8.00 per minute of Central Processing Unit (CPU) time;

(7) For copies of paper documents in sizes not larger than 8½ x 14, $0.10 per copy of each page;

(8) For duplication of non-paper media (film, magnetic tape, diskette, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(9) For copies of reports, maps, reference aids, and other Agency publications, actual costs.

(h) Inasmuch as the Agency's systems of records are decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraphs (g)(4) through (6) of this section, do not include whatever manual search time is needed to determine whether the records located are in fact responsive to the request.

(i) Search fees are assessable even when no records pertinent to the requests, of no releasable records are found, provided the requester has been advised of this fact and he has, notwithstanding, agreed to incur the costs of search. Individuals associated with or otherwise making requests on behalf of any organization or other entity or person shall be jointly and severally liable with such party for all applicable search, review, and reproduction costs incurred.

(j) For requests which have accrued search and duplication fees in excess of $250.00, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time the records are provided. Payment shall be remitted by check or money order, made payable in U.S. dollars to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals shall be accepted or any additional records services provided to the requester or associated requester until the requester and associated requesters have paid all outstanding charges for services rendered under this CFR part or corresponding CFR part for other government agencies or departments. In cases of requesters associated with, acting in concert with, or on behalf of any other individual or organization, such requesters, individuals and organizations shall be jointly and severally liable for all applicable charges.

(k) With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of

collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that, except for commercial use requesters, the Agency will not begin to assess fees until after providing the specified free search and reproduction. If the amount of the chargeable fees is equal to or less than the cost of the Agency of billing the requester and processing the fee collected, no charges would result. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittances will not be considered in the Agency's determination.

(1) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard Agency size which will normally be "8½x11" or "11x14." Thus, requesters would not be entitled to 100 microfiche or 100 computer diskettes, for example, but rather such microfiche, diskettes, or other computer output having a dollar value equivalent to 100 pages of paper copies (i.e., $10.00).

(2) Similarly, the term "search time" in this context has, as its basis, manual search. To apply this term to searches made by computer, the Agency will provide computer searches under § 1900.25(c)(4) through (6) having a dollar value equivalent to two (2) hours of professional search time (i.e., $36.00).

(l) There are four categories of FOIA requesters: "commercial use" requesters; "educational and non-commercial scientific institution" requesters; "representatives of the news media" requesters; and, "all other" requesters. The FOIRA prescribes specific levels of fees for each of these categories:

(1) *"Commercial Use" Requesters:* When the Agency receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The Agency will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *"Educational and Non-commercial Scientific Institution" Requesters:* The Agency will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying United States institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) *"Representatives of the News Media" Requesters:* The Agency shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1900.3(q), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of a requester shall not be considered to be a request that is for commercial use provided that the requester meets the requirements specified in § 1900.3(q). Requesters must reasonably describe the records sought.

(4) *"All Other" Requesters:* FOIA requesters who do not fit in any of the categories above will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requesters asking for records about themselves will continue to be treated under the CIA fee provisions of the Privacy Act of 1974 which permit access to records without charge.

Processing Freedom of Information and Executive Order Communications

§ 1900.31 Screening communications.

(a) If any Agency employee receives a written communication which the employee believes to be an apparent or intended communication under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12356, he shall expeditiously transmit the communication to the Coordinator.

(b) Upon receipt of a communication in accordance with § 1900.11 or paragraph (a) of this section, the Coordinator shall promptly consult with such Agency components as he may deem appropriate and:

(1) Determine the nature of the communication—an expression of interest (§ 1900.33), a request (§ 1900.35) or other, and

(2) If he determines the communication to be an intended expression of interest or intended request, he shall further determine whether it fails to qualify as an expression of interest or request only because it fails to reasonably describe the records of interest.

(c) The Coordinator thereupon shall take the appropriate one of the following actions.

(1) If he determines that the communication was not an intended expression of interest or an intended request, he shall take such action with respect to the communication as he may deem appropriate.

(2) If he determines that the communication was an intended expression of interest or an intended request but failed to reasonably describe the records of interest, he shall so inform the originator of the communication promptly, in writing, and he may offer to assist the originator in revising and perfecting the description of the records of interest.

(3) The Coordinator shall determine whether any communication not acted on under paragraph (c)(1) or (c)(2) of this section is an expression of interest, or is a request made in accordance with published rules stating the procedures to be followed, as required by subsection (a)(3) of the Freedom of Information Act or Executive Order 12356. The Coordinator's determination in this regard shall be based on and shall reflect the clear intent of the originator of the communication insofar as the Coordinator is able to determine that intent. When the originator's intent is not apparent to the Coordinator and when the Coordinator deems it desirable and feasible, he shall promptly communicate with the originator in order to ascertain the latter's intent. In this and any cases where additional information is required, the request will be canceled after 60 days if no reply is received.

(d) The Coordinator shall inform the requester, in writing, of his determination made under paragraph (c)(3) of this section and, in the case of a determination that the communication is a request, of the date of acceptance. The search conducted pursuant to that request shall be for records in existance as of and through the acceptance date. Such notification shall be given promptly and, in any case, within five work days of the date of such determination. The ten work days within which the Agency must determine whether to comply with a

request, as provided by subsection (a)(6)(A)(i) of the Freedom of Information Act, shall begin as of the acceptance date.

(e) The Coordinator shall promptly process under the procedures specified by § 1900.33 those communications which he determines to be expressions of interest. He shall promptly process under the procedures specified by § 1900.35 those communications which he determines to be requests.

§ 1900.33 Processing expressions of interest.

(a) Upon determining, in accordance with § 1900.31(c)(3), that a communication is an expression of interest, and after promptly consulting with such Agency components as he may deem appropriate, the Coordinator, to the extent feasible, shall determine the applicable search, review (if applicable), and, duplication charges likely to be incurred in processing the potential request. In determining such charges, the Coordinator shall take into account the nature and quantity of the work and services of people and computers and other equipment which may be required, and the applicable rates set out in the fee schedule prescribed by § 1900.25(g). If feasible at this stage, the Coordinator also shall determine whether to waive or reduce the fee in accordance with § 1900.25(a).

(b) The Coordinator thereupon shall advise the potential requester, in writing, of the likely charges and he shall make clear that the amounts indicated are estimates only, if such be the case, and, if there is a possibility that the charges to be incurred may be greater than the estimate, he shall so inform the potential requester. If the amounts indicated are not estimates but are the amounts which in fact are to be charged if the potential requester makes a request, he shall inform the potential requester of that fact. In either event, he shall also inform the potential requester that search charges will be levied upon the requester even if no records fitting the description are located or if any or all records which do fit the description are denied the requester.

(c) When he deems it appropriate or when the potential requester so requests, the Coordinator may assist the requester in determining whether and, if so, how to revise the description of the records of interest so as to cause or permit a reduction in the likely applicable charges.

(d) Upon receipt of such estimate and advice concerning likely charges, the potential requester may:

(1) In accordance with § 1900.11, submit a request for records, either the records of interest indicated in his expression of interest or records encompassed in a modified description;

(2) Advise the Coordinator that he does not intend to request records; or

(3) Take no additional action.

(e) If, as a result of his consultations with the Coordinator or otherwise, the potential requester wants to request records additional to or other than those described in his expression of interest, he may submit an expression of interest with respect to such records, in accordance with § 1900.33 or a request for such records in accordance with § 1900.35.

§ 1900.35 Processing requests for records.

(a) Upon determining that a communication is a request for records, the Coordinator, after consulting with such Agency components as he may deem appropriate, shall promptly transmit a copy of the request to the component or components believed to be a logical repositor of responsive records, inform the components of the date of receipt of the request as determined by him pursuant to § 1900.31(d), and alert the components to the action required of them by §§ 1900.41 through 1900.47 with respect to the request. Requests will be handled with each component on a first-received, first-answered basis. In those components where the volume of pending, highly-complex ("project") requests has substantially impeded the processing of other smaller requests, the Coordinator may direct the establishment of a dual-queue system in order to ensure that both regular and project requests receive appropriate and equitable processing.

(b) Notwithstanding paragraph (a) of this section, the Coordinator may determine that there is no basis for searching for the requested records or that the Agency's required response to the request obviates the need to conduct any search since

(a) The fact of the existence or non-existence of records responsive to the request would itself be classified pursuant to Executive Order 12356, or,

(2) The category of the information requested is within the scope of 50 U.S.C. 403(d)(3), 50 U.S.C. 403g, or other applicable exempting statute and thus the requested information, if it existed, would be exempt from required disclosure pursuant to FOIA exemption (b)(3).

Whenever the Coordinator makes such a determination he shall respond to the requester accordingly, and the requirements of paragraph (a) of this section and of §§ 1900.41 through 1900.43 shall not apply as to that particular request.

Actions on Requests

§ 1900.41 Searching for requested records.

(a) Upon receipt of a copy of a request and the tasking pursuant to § 1900.35, the components which are logical repositories of the requested records (hereinafter the "cognizant components"), shall, with such assistance as may be appropriate from the Coordinator and from such reference, indexing of filing aids as available, undertake to locate the requested records from all files except those designated by the Director of Central Intelligence as exempt from search pursuant to the CIA Information Act, 50 U.S.C. 431 through 432.

(b) If no records described by the requests are located, the cognizant components shall inform the Coordinator who shall promptly inform the requester in writing. The Coordinator also shall determine the charges, if any, for which the requester shall be liable, in accordance with the fee schedule and provisions of § 1900.25. He shall inform the requester of the amount charged, explain the basis of computation, and request prompt payment thereof.

§1900.43 Reviewing records.

(a) The cognizant components shall review any located records in accordance with the provisions of the Freedom of Information Act and Executive Order 12356 and on the basis of other applicable law, regulations and policy, and determine which, if any, requested records, or reasonably segregable portions of records, are to be furnished the requester and which are to be denied or withheld. Any decision to furnish or to deny or withhold requested records shall be made only by employees and officials to whom authority to make such decisions has been duly delegated.

(b) In the event an Agency component believes that located records require review by another CIA component or another agency, it shall forward such records to the Coordinator who shall expeditiously coordinate such review.

(c) In the event located records are determined to have originated with another government agency, the Coordinator shall expeditiously forward such records or a description thereof to the originating agency for their determination.

(d) Pursuant to subsection 3.4(f)(1) of Executive Order 12356, this Agency shall refuse to confirm or deny the existence

or non-existence of information requested whenever the fact of its existence or non-existence is itself classifiable under this Order.

§ 1900.45 Expeditious action; extension of time.

(a) Concerning Freedom of Information Act requests, whenever feasible under the standards prescribed by § 1900.47, the search and review functions prescribed by §§ 1900.41 and 1900.43 and notice to the requester of the Agency action on the request, as prescribed by § 1900.49(a), shall be completed within ten days of the date of Agency receipt of the request as determined by the Coordinator pursuant to § 1900.31(d). Whenever the Coordinator determines that "unusual circumstances" as defined by subsection (a)(6)(B) of the Freedom of Information Act exist, he may, by written notice to the requester, authorize an additional period for completion of Agency action, but no such extension shall be for more than ten work days. His notice shall also set forth the reasons for the extension.

(b) Concerning mandatory declassification review requests, Agency responses shall be governed by the amount of search and review time required to process the request under §§ 1900.41 and 1900.43. If unusual circumstances prevent a final Agency determination from being reached within one year of the date of receipt, the Agency shall inform the requester of the additional time needed to process the request.

§ 1900.47 Allocation of manpower and resources; agreed extension of time.

(a) Agency components shall devote such manpower and other resources to searching for, locating and reviewing records in accordance with §§ 1900.41 and 1900.43 as may be appropriate and expedient in the circumstances, taking into account:

(1) The manpower and resources available for those purposes;

(2) The right of a requester submitting a request under the Freedom of Information Act to resort to litigation if the Agency decision on the request is not made within ten work days; and

(3) All functions, duties and responsibilities assigned to those components by, or pursuant to, a law.

(b) The responsible components shall consult with the Coordinator with regard to the need to allocate resources and establish priorities, and the latter with the requester, as may be appropriate, in order to accomplish such arrangements and agreements with the requester as may be acceptable to the requester concerning the Agency's efforts and ability to act on his request expeditiously. In particular, when the Coordinator deems it feasible and of possible benefit to the requester, the public, or the Agency, he shall inform the requester that more thorough or extensive search or review, or both, could be accomplished, which might be of benefit to the requester, if additional time were to be available. When appropriate in such cases, the Coordinator shall also advise the requester of the effect on charges and fees such additional search might cause. Any extensions arranged or agreed to under this section may be in addition to any extensions under § 1900.45.

§ 1900.49 Notification and payment; furnishing records.

(a) The Coordinator shall promptly inform the requester, in writing, which of the requested records, or portions thereof, if any, are to be furnished the requester and those, if any, which are denied, as determined pursuant to § 1900.43(a). With respect to the latter, he shall also explain the reasons for the denial and he shall furnish the names and titles or positions of the persons responsible for the decision to deny access.

(b) Upon receipt of payment of all fees and charges, or upon the completion of arrangements satisfactory to the Coordinator that payment will be made promptly, the Coordinator shall promptly prepare copies of the records, or portions of records, which are to be made available and transmit them to the requester. The Coordinator shall do likewise with respect to any records or portions of records made available to a requester by the action of the Central Intelligence Agency Information Review Committee under § 1900.51(e).

(c) As an alternative to any requester receiving any records from the Agency by mail, a requester may arrange to inspect the records at a CIA Reading Room in the metropolitan Washington, DC area. The Coordinator will designate a Reading Room for the purpose of records inspection, and the requester may select whatever records the requester wishes to purchase at a cost set forth in § 1900.25. Access to the Reading Room will be granted only after the fees that accumulated from the search (and review if applicable) to produce the requested records have been paid, or waived by the Coordinator pursuant to § 1900.25(a). Upon receipt of a written statement from the requester exercising this option, the Coordinator will advise the requester of the location of the Reading Room and provide directions thereto. Records that the Agency will release will be available for inspection in the Reading Room on a date or dates mutually agreed upon by the Coordinator and the requester, not more than seven days from the Agency's receipt of the written request or from completion of the processing of the request for records, whichever is later. The requester may agree to a date or dates more than seven days from such time. On the days the Reading Room is open, it will be available to requesters from 9:30 a.m. to 3:30 p.m.

Appeals

§ 1900.51 Appeals to CIA Information Review Committee.

(a) *Establishment of Committee.* The CIA Information Review Committee is hereby established pursuant to the Freedom of Information Act and section 3.4(d) of Executive Order 12356. The Committee shall be composed of the Deputy Director for Administration, the Deputy Director for Operations, the Deputy Director for Science and Technology, the Deputy Director for Intelligence, and the Inspector General. The Director of Central Intelligence shall appoint a Chairman. The Committee, by majority vote, may delegate to one or more of its members the authority to act on any appeal or appeals under this section, and may authorize the Chairman to delegate such authority. The Chairman may appoint an Executive Secretary and delegate such authorities as he deems appropriate; in the absence of such an appointment, he shall exercise any delegated or assigned functions himself. The Chairman may call upon appropriate components to participate when special equities or expertise are involved.

(b) *Right of appeal; Notice.* Whenever access to any requested record or any portion thereof is denied, the requester shall be apprised, in writing, of his or her right to appeal the denial to the CIA Information Review Committee through the Coordinator.

(c) *Appeal procedures.* Any such appeal or request to the Committee shall be in writing, addressed to the Coordinator. The appeal or request may present such information, data, and argument in support thereof as the requester may desire. The Committee shall not permit a requester or his representative to appear before the Committee or to make an oral presentation. No appeal shall be accepted if the requester or associated requester has outstanding record service charges with the CIA or other federal government agency or department.

(d) *Time for appeal; expiration of appeal.* An appeal under the Freedom of Information Act shall be exercised

within thirty days of the date of receipt of notification of the right to appeal and the right of appeal shall cease as of the expiration of that period. But the Committee, for good cause shown, may permit an additional thirty days for the submission of an appeal. Pursuant to the mandatory declassification review provisions of Executive Order 12356, an administrative appeal must be filed within sixty days of receipt of the denial of the initial request.

(e) *Committee action on appeals and requests.* (1) The Committee shall promptly consider any appeal, together with any submissions in support thereof, and shall grant or deny the appeal or take such other action thereon as it may deem appropriate. The Committee's review, decision and action shall be based on and shall be in conformance with the Freedom of Information Act, Executive Order 12356 and other applicable law, directives, regulations and policy.

(2) The Committee shall promptly consider any requests under Executive Order 12356 for declassification under paragraph (a) of this section and shall declassify any such records or reasonably segregable portions or coherent segments of such records as it deems appropriate in accordance with Executive Order 12356.

(3) Committee action on appeals of FOIA determinations shall be completed within twenty work days of receipt of the appeal, and appeal of mandatory declassification review determinations shall be completed within thirty (30) workdays, except that the Committee may, in accordance with the provisions of § 1900.45, avail itself of an additional period of time for completion of its work on the appeal. But no such extension shall be available with respect to an appeal of a denial of a request which was the subject of an extension of time for Agency action by the Coordinator under this Part. In the event that the Committee is unable to complete its review of an appeal within the time prescribed by this subsection, it shall so advise the requester.

(4) Concerning appeals under the FOIA, the Committee shall promptly inform the requester of its determination(s) and, with respect to any decision to withhold or deny records, it shall identify the officer responsible therefore. If any record or portion thereof is denied the requester by the Committee's action, the Committee shall also inform the requester of the provision for judicial review of that determination under subsection (a)(4) of the Freedom of Information Act.

(5) Concerning appeals under the mandatory declassification review provisions of Executive Order 12356, Committee decisions are final and no right of judicial review exists.

Miscellaneous

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive Order for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project. It is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or Executive Order 12356.

(b) The Coordinator may authorize access, under such conditions and at such time and place as he may deem feasible. But the Coordinator shall authorize access only with respect to documents and records prepared or originated not less than ten years prior to the date of such requests and only upon the prior written approval by the CIA Director of Security of a current security clearance of the requester and of persons associated with him in the project, in accordance with applicable executive orders, regulations, and directives, and upon the Coordinator's further determination that:

(1) A serious professional or scholarly research project is contemplated;

(2) Such access is clearly consistent with the interests of national security;

(3) Appropriate steps have been taken to assure that classified information will not be published or otherwise compromised;

(4) The information requested is reasonably accessible and can be located and compiled with a reasonable amount of effort.

(5) The historical researcher agrees to safeguard the information in a manner consistent with Executive Order 12356, and signs an agreement to safeguard the classified material to which access is granted in accordance with Agency security requirements; and

(6) The historical researcher agrees to authorize a prior review of his notes and manuscript by the Agency for the sole purpose of determining that no classified information is contained therein.

(c) An authorization shall be valid for the period required for the research project as the Coordinator may determine, but in no event for more than two years. But upon renewed request in accordance with paragraph (a) of this section, authorization may be renewed in accordance with paragraph (b) of this section and this paragraph.

(d) The Coordinator shall cancel any authorization whenever the Director of Security cancels the security clearance of the requester or of any person associated with the requester in the research project or whenever the Coordinator determines that continued access would not be in compliance with one or more of the requirements of paragraph (b) of this section.

§ 1900.63 Suggestions and complaints.

Any person may direct any suggestion or complaint with respect to the CIA administration of Executive Order 12356 to the CIA Information Review Committee. The Committee shall consider such suggestions and complaints and shall take such action thereon as it may deem feasible and appropriate.

Date: December 2, 1987.

William F. Donnelly,

Deputy Director for Administration.

[FR Doc. 87-28115 Filed 12-7-87; 8:45 am]

BILLING CODE 6310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3295-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: This notice approves, as a revision to the Ohio State Implementation Plan (SIP) for total suspended particulates (TSP), operating permits for the following two shiploading facilities: The Andersons Grain Division, Toledo Plant and Mid-States Terminals Incorporated. These permits are needed to satisfy the requirements of Part D of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on January 7, 1987.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Delores Sieja, at (312) 886-6038, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.
Ohio Environmenal Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, OH 43266–0149
U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: Part D of the Clean Air Act, which was added by the 1977 Amendments, requires each State to revise its SIP to meet specific requirements for areas designated as nonattainment. The nonattainment plan SIP revisions mandated by Part D must provide for attainment of the primary NAAQS as expeditiously as practicable.

In the State of Ohio, one portion of its Part D SIP must require control of shiploading operations at grain terminals. For this Part D plan to be approvable, all such sources in the State's nonattainment areas must meet a reasonably available control technology (RACT) level of control.

On November 20, 1985, the State of Ohio submitted operating permits for its two shiploading facilities, The Andersons Grain Division, Toledo Plant and Mid-States Terminals Incorporated, as revisions to the Ohio SIP for total suspended particulates (TSP).[1] To be acceptable as RACT, the permits for these sources must require the installation of systems to control emissions of fugitive dust from shiploading spouts for all types of grains. In addition, the permits must include provisions for self-monitoring, reporting and recordkeeping, and compliance time schedules.

On January 2, 1987 (52 FR 100), USEPA proposed to approve these permits because they were acceptable as the Part D plan for shiploading operations in Ohio and they met all other applicable general requirements of section 110. (The January 2, 1987, notice also proposed action on Ohio's draft statewide Part D TSP plan. USEPA will rulemake on the remainder of Ohio's Part D TSP plan in a future **Federal Register** notice.) Since the January 2, 1987, notice of proposed rulemaking contains a detailed evaluation of the permits, they will not be dicussed in detail in this notice. USEPA will, however, briefly summarize these two permits with respect to the: (1) Types of control systems that USEPA found acceptable as RACT for non-specialty and specialty grains, (2) other permit provisions, and (3) compliance time schedules.

I. Types of Control Systems USEPA Has Found Acceptable as RACT for Non-Specialty and Specialty Grains

A. Non-Specialty Grains

• The Andersons and Mid-States both require the utilization of a mineral oil spray system to suppress dust during all shiploading operations, except for specialty grain loading (which comprise ten percent of the grain loaded).

B. Specialty Grains

• Mid-States utilizes a system consisting of covering the hatches and loading spouts with tarpaulins and exhausting the air space between the load and tarpaulins to the pollution control equipment baghouses for the entire loading process, except for loading the top four feet of hold space. Beyond this four feet point, the loading is defined as "topping-off" and will go uncontrolled. USEPA finds the uncontrolled period of topping-off to be acceptable because, during this period, a very negligible amount of emissions will occur and only approximately 2½ percent of the total grain loaded on an annual basis will be uncontrolled.

• The Andersons utilizes an alternative spraying system (water) and a dust evacuation technique to clean the grain.

II. Other Permit Requirements

• Other permit requirements in both permits include self-monitoring, reporting and recordkeeping requirements.

III. Compliance Time Schedules

• For Mid-States, the permit contains a compliance time schedule that specifies a final compliance date of April 30, 1986.

• For The Andersons, the permit requires immediate compliance. The permit does not contain a compliance time schedule because the Andersons is currently employing the mineral spray and specialty grain system and is presently meeting the above RACT requirements.

Interested parties were given until February 2, 1987, to submit comments on the January 2, 1987, proposed action. No comments were received. Therefore, based on USEPA's analysis of the available data, USEPA approves the permits as revisions to the Ohio SIP for TSP.

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1988. This action may be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 20, 1987.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio—Subpart KK

Title 40 of the CFR, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1820 is amended by adding new paragraph (c)(77) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(77) On November 20, 1985, the Ohio Environmental Protection Agency submitted a revision to the State Implementation Plan for Total Suspended Particulates. This revision request is for operating permits for the following two shiploading facilities: The Andersons Grain Division, Toledo Plant and Mid-States Terminals, Incorporated.

(i) Incorporation by reference.

(A) Permit to Operate an Air Contaminant Source for The Andersons

[1] The USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option USEPA will continue to process TSP SIP revisions which were in process at the time the new (PM_{10}) standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2) USEPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceeding the approval of State plans specifically aimed at PM_{10}. If USEPA judges these TSP SIP's to include more stringent provisions than those in the existing TSP plan, thus resulting in better control of PM_{10} as well, then it is USEPA's general policy to approve the SIP revisions.

Grain Division, Toledo Plant. Date of Issuance: November 18, 1985.

(B) Permit to Operate an Air Contaminant Source for Mid-States Terminals, Incorporated. Date of Issuance: November 18, 1985.

[FR Doc. 87-27300 Filed 12-7-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 81

[Region II Docket No. 77; FRL-3299-3]

Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for New York State

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA's) approval of a request from the State of New York to revise the air quality designation of the Village of East Syracuse and certain other areas in the City of Syracuse with respect to attainment of the secondary total suspended particulate matter national ambient air quality standards. Specifically, this action means that the air quality in these locations will be designated as "better than national standards" with respect to particulate matter.

EFFECTIVE DATE: This action is effective January 7, 1988.

ADDRESSES: Copies of the proposal submitted by the State are available for public inspection during normal business hours at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278;

New York Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list, covering all areas within the state, of attainment status designations with respect to the national ambient air quality standards. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, these designations have been revised from time to time at a state's request.

EPA's Review Criteria

EPA has summarized its policy on TSP redesignations in a memorandum of April 21, 1983 from Sheldon Meyers, former Director of EPA's Office of Air Quality Planning and Standards (OAQPS), and a memorandum of September 30, 1985 from Gerald Emison, current Director of OAQPS. The Meyers memorandum generally requires eight quarters (two years) of monitoring data showing no violations and, for areas having an EPA-approved, full Part D control strategy, evidence that the strategy has been implemented. The most recent four quarters of monitoring data may be used if dispersion modeling shows that the SIP strategies are sound and if actual enforceable emission reductions have occurred.

State Submittals and EPA's Review Findings

On March 7, 1985, the New York State Department of Environmental Conservation (NYSDEC) submitted a request to revise its air quality designations from "nonattainment of the secondary total-suspended particulate matter (TSP) standard" in a total of four areas in Syracuse and the Village of East Syracuse to "better than national standards" (i.e., attainment). This request was supplemented with additional information on April 3 and June 20, 1985. The geographical boundaries of these areas are described in detail in the November 14, 1986 proposal (51 FR 41355).

The four areas include: (1) The area north and slightly to the west of the Syracuse Central Business District, (2) the Central Business District of Syracuse, (3) the area between the Syracuse Central Business District and the southeast coast of Onondaga Lake, and (4) the Village of East Syracuse.

Each of these areas has met all EPA criteria for redesignation through air monitoring or modeling demonstrations and by having an EPA fully approved, implemented State Implementation Plan. In each area, there are eight or more complete quarters of recent air quality data which show attainment of the secondary particulate matter ambient air standard. Further, all point source emissions comply with the stack height regulations promulgated by EPA on July 8, 1985 (50 FR 27892). Control strategies which have been applied in each of the areas proposed for redesignation are well-documented in the SIP. These include enforceable emission reductions at three major industrial facilities in metropolitan Syracuse, and implementation of the Federal Motor Vehicle Control Program.

Beyond these measures, in the Central Business District, an additional reduction in emissions was determined to have occurred as demonstrated by a fuel survey completed in January 1980. The survey showed conclusively that previous emissions estimates for the Central Business District were too high.

These revised emission estimates were alone sufficient to insure modeled attainment of all the applicable air quality standards. This new survey is more accurate than previous estimates, because it was based on actual fuel use determined on a building by building basis.

EPA is today approving the redesignation request submitted by the State of New York. No comments were received during the comment period which ended on December 15, 1986.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1988. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 20, 1987.

Lee M. Thomas,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40 Chapter I, Subchapter C; Part 81, Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 81.333 is amended by revising the entry for the New York Central AQCR in the particulate matter attainment status designation table "New York—TSP" to read as follows:

§ 81.333 New York.

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
New York—TSP				
Central AQCR:				
Portion of Syracuse (Southwest of the Barge Canal, northwest of Bear Street, Northeast of I-690 and southeast of Onondaga Lake).		X		
Remainder of Syracuse				X
Village of East Syracuse				X
The Village of Solvay		X		
Remainder of AQCR				X

[FR Doc. 87-28100 Filed 12-7-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3299-7]

Alabama; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final Determination on Alabama's application for final authorization.

SUMMARY: Alabama has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Alabama's application and has reached a final determination that Alabama's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Alabama to operate its program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: Final authorization for Alabama shall be effective at 1:00 p.m. on December 22, 1987.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)).

On November 7, 1985, Alabama submitted an official application to obtain final authorization to administer the RCRA program. On May 21, 1987, EPA published a tentative decision announcing its intent to grant Alabama final authorization. Further background on the tentative decision to grant authorization appears at 52 FR 19140, May 21, 1987.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held on June 25, 1987. There was no opposition to the State's Final Authorization request at the hearing. The State received three written comments. Eight oral comments were offered at the hearing. Each commended the Alabama Department of Environmental Management (ADEM) for their efficiency in managing the program. The nature of these comments did not require any change in ADEM's application package.

State requirements which are not part of the RCRA program and are broader in scope than Federal requirements include sections 22-30-5, 22-30-12(C)(1), and 22-30-19 of the Alabama Hazardous Waste Management Act.

The Memorandum of Agreement with the Regional Administrator provides that the State Director will review all permits issued under State law prior to the date of program approval, and modify or revoke and reissue such permits to ensure conformity with the Federal program. In the case of permits issued by EPA prior to the date of program approval, a notice of intent to terminate or modify such permits will be made as appropriate in the course of transferring permit responsibility to the approved State program. EPA shall issue permits, or portions of permits, to facilities in Alabama as necessary to implement the Hazardous and Solid Waste Amendments of 1984.

Alabama is not authorized by the Federal government to operate the RCRA program on Indian Lands. This authority will remain with EPA.

B. Decision

After reviewing the public comments on the tentative determination and the state's application, I conclude that Alabama's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). Alabama now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA.

Alabama also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

As stated above, Alabama's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA. Prior to that date, a State with Final Authorization administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized

States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Alabama. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. Where HSWA-related requirements apply, EPA will administer and enforce these portions of the HSWA in Alabama until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a HSWA provision remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in Alabama. Alabama is not being authorized now for any requirement implementing the HSWA or listing HSWA requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702-28755, July 15, 1985.

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record-keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C 6912(a), 6926, 6974(b).

Dated: October 20, 1987.

Lee A. DeHihns,

Acting Regional Administrator.

[FR Doc. 87-28101 Filed 12-7-87; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amdt. H-164]

Reporting of Excess Real Property

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This rule amends the regulation covering the reporting of excess Government-owned real property. The regulation is amended to require that a certification concerning polycholorinated biphenyl (PCB) equipment be transmitted with all reports of excess Government-owned land submitted under 40 U.S.C. 483(b).

EFFECTIVE DATE: This regulation is effective December 8, 1987.

FOR FURTHER INFORMATION CONTACT: Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, General Services Administration (202-535-7052).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least new cost to society.

List of Subjects in 41 CFR Part 101-47

Surplus Government property, Government property management.

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Accordingly, 41 CFR Part 101-47 is amended as follows:

1. The authority citation for Part 101-47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

Subpart 101-47.2—Utilization of Excess Real Property

2. Section 101-47.202-2 is amended by revising paragraphs (c)(1) and (c)(2) and by adding paragraph (c)(3) to read as follows:

§ 101-47.202-2 Report forms.

(c) * * *

(1) A legible, reproducible copy of all instruments in possession of the agency which affect the right, title, or interest of the United States in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). In cases where the agency considers it to be impracticable to transmit the abstracts of title and related title evidence, such documents need not be transmitted; however, the name and address of the custodian of such documents shall be stated in the title report referred to in § 101-47.202-2(b) and they shall be furnished if requested by GSA;

(2) Any appraisal reports in the possession of the holding agency of the fair market value or the fair annual rental of the property reported; and

(3) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by the Environmental Protection Agency under 40 CFR Part 761. If the property does contain any equipment subject to 40 CFR Part 761, the certification must include an assurance on behalf of the holding agency that each item of such equipment is now and will be maintained in a state of compliance with such regulations until disposal of the property.

* * * * *

Dated: November 9, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-28060 Filed 12-7-87; 8:45 am]

BILLING CODE 6820-25-M

41 CFR Part 105-55

Collection of Claims Owed the United States

AGENCY: Office of the Comptroller, GSA.

ACTION: Final rule.

SUMMARY: On August 21, 1987 (52 FR 31642), GSA published for comment in the Federal Register a proposal to establish the right of the General Services Administration (GSA) to collect claims arising under contracts subject to the Contract Disputes Act of 1978, 41 U.S.C., 601 et seq. (CDA), utilizing the provisions of the Debt Collections Act of 1982 (DCA), except that the application of administrative offset procedures in the DCA would not be applied to the CDA claims. The proposed regulations also established the right of GSA to collect through administrative offset for claims arising under contracts subject to the CDA pursuant to the Government's right under common law. The amendments were designed to supplement the General Services Administration current regulations for collection of claims owed the United States as published in Title 41 of the Code of Federal Regulations, Part 105-55.

No parties submitted comments to GSA's proposal.

DATE: December 8, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Dobranski, Office of Finance, Financial Information Control Division (BCD) 202-535-7620.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 105-55

Claims.

PART 105-55—COLLECTION OF CLAIMS OWED THE UNITED STATES

1. The authority citation for Part 105-55 continues to read as follows:

Authority: 31 U.S.C. 3701-3719; Pub. L. 97-365, 96 Stat. 1754.

2. Section 105-55.003 is amended by revising paragraph (a) to read as follows:

§ 105-55.003 Applicability.

(a) This part applies to all claims due the United States under the Federal Claims Collection Act, as amended by the Debt Collection Act, arising from activities under the jurisdiction of the General Services Administration, except for the collection by administrative offset of those claims arising out of contracts subject to the Contracts Disputes Act of 1982, 41 U.S.C. 601 et. seq. The word "claims" includes but is not limited to amounts due the United States from fees, overpayments, fines, civil penalties, damages, interest and other sources.

* * * * *

3. Section 105-55.007 is amended by revising paragraphs (a) and (d) to read as follows:

§ 105-55.007 Collection by offset.

(a) Whenever feasible, after a debtor fails to pay the claim, request a review of the claim, or make an arrangement for payment. The Comptroller or his appropriate regional designee will collect claims under this part by means of administrative offset against obligations of the United States to the debtor, pursuant to 31 U.S.C. 3716, except offset of Federal salaries and claims arising out of contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 et. seq.

* * * * *

(d) The offset of claims arising out of contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 et. seq. will be made pursuant to the Government common law right of offset.

* * * * *

Dated: November 12, 1987.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 87-28058 Filed 12-7-87; 8:45 am]

BILLING CODE 6820-BN-M

41 CFR Parts 201-1, 201-2, 201-23, and 201-24

[FIRMR Temp. Reg. 13, Supp. 1]

Temporary Implementation of the Title VIII, Paperwork Reduction Reauthorization Act of 1986, Pub. L. 99-500 Regarding Automatic Data Processing Equipment

AGENCY: Information Resources Management Service, GSA.

ACTION: Temporary regulation, supplement.

SUMMARY: This supplement extends Federal Information Resources Management Temporary Regulation 13 for one additional year. Temporary Regulation 13 implemented applicable portions of the Paperwork Reduction Reauthorization Act of 1986. The statute provided a new definition of "automatic data processing equipment" under Pub. L. 89-306, as amended (Brooks Act). The intent of this extension is to permit additional comments to be incorporated into a proposed codification amendment and to continue temporary implementation of the statute.

DATES: Effective date: December 23, 1987.

Expiration date: December 23, 1988.

Comments are due: January 7, 1988.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), Project 87.16A[P], Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton or William R. Loy, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) Temporary Regulation 13 was published in the Federal Register on December 23, 1986 (51 FR 45887). Pursuant to 41 U.S.C. 418(d), the publication of the original rule was waived because of urgent and compelling circumstances to implement Pub. L. 99-500 which was effective as of October 18, 1986. The publication of a proposed rule is again waived because the extension of the expiration date of the original rule is of a technical or editorial nature without a change of substance. The rule itself is a solicitation for public comments while additional rulemaking is in progress.

(2) Additional comments are welcome, and all comments received during the temporary regulation supplement comment period will be considered in a proposed codification amendment.

(3) The General Services Administration (GSA) has determined

that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. The temporary rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

List of Subjects in 41 CFR Parts 201-1, 201-2, 201-23, and 201-24

Computer technology, Government procurement, Government property management. Information resources activities, Competition.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

In 41 CFR Chapter 201, FIRMR Temporary Regulation 13, Supplement 1 is added to Appendix A at the end of the chapter.

[FIRMR Temp. Reg. 13; Supplement]

November 10, 1987

To: Heads of Federal agencies

Subject: FIRMR Implementation of the "Paperwork Reduction Reauthorization Act of 1986" (Title VIII, Public Law 99-500)

1. *Purpose.* This supplement extends the expiration date of FIRMR Temporary Regulation 13 for one additional year. Accordingly, the comment period is also extended to January 7, 1988. This extension will permit additional comments to be incorporated into a proposed codification amendment and continue temporary implementation of the subject statute.

2. *Effective date.* This regulation is effective December 23, 1987.

3. *Expiration date.* The expiration date of this temporary regulation is extended from December 23, 1987, to December 23, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-28059 Filed 12-7-87; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3420 and 3460

[AA-650-07-4121-2410; Circular No. 2601]

Competitive Leasing and Environment; Amendments to the Federal Coal Management Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking is designed to clarify or modify those sections of the Federal coal management program regulations related to multiple use decisions involving coal and certain of the 20 different coal unsuitability criteria and their application during the Bureau of Land Management's land use planning process. The changes made by the final rulemaking arise from the Office of Technology Assessment's study of the Federal coal management program's treatment of environmental issues, and from the Secretary of the Interior's decisions of February 1986 on the Federal coal leasing program.

EFFECTIVE DATE: January 7, 1988.

ADDRESS: Inquiries or suggestions should be sumitted to: Director (650), Bureau of Land Management, Room 3610, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343-6821.

SUPPLEMENTARY INFORMATION: A proposed rulemaking that would amend certain of the procedures by which land use planning is conducted for coalbearing Federal lands was published in the **Federal Register** on May 15, 1987 (52 FR 18404). During the 30-day comment period provided in the proposed rulemaking, ten comments were received: Five from Federal agencies; two from industry trade associations; one from a private advocacy group; one from an association of local governments; and one from an environmental group. The comments covered all aspects of the proposed rulemaking and are discussed below.

General Comments

Four comments were received that covered what they perceived as the overall effect of the proposed rulemaking. Three of these four comments expressed the view that the proposed rulemaking did not provide adequate protection for sensitive resources and their environmental values and uses, such as wetlands and units of the National Park System and failed to ensure reclaimability for sensitive areas. These comments requested that the final rulemaking include additional unsuitability criteria covering wetlands, units of the National Park System and reclaimability. The fourth comment on the proposed rulemaking expressed the view that the existing regulations unduly restricted coal development on the public lands and that this restriction endangered the United States economy, national security, and the national energy program. This comment requested that the final rulemaking provide a process for the reinstatement of coalbearing lands later in the coal leasing process if dropping them from further consideration for coal leasing during land use planning was later found to be unjustified. This comment also requested that coal lessees be guaranteed the right to develop a lease which had been finalized through the complex and lengthy regional coal leasing process mandated by the existing regulations.

The final rulemaking does not add any new coal unsuitability criteria. The Secretary of the Interior reviewed the arguments in favor of establishing new criteria during the decision process and decided against the addition of any new criteria. No new reasons were presented in the comments on the proposed rulemaking that would justify having the Secretary revisit the decision not to add any new criteria. Thus, the final rulemaking reflects the Secretary's February 1986 decision on this issue.

The final rulemaking has not adopted the request in one of the comments that a process be added to the existing regulations under which coalbearing lands dropped from further consideration for coal leasing during land use planning could later be reinstated during regional coal activity planning. A similar comment was considered in connection with the discussion of whether or not to reinstate thresholds in the Federal coal management regulations (See Appendix IV of the Secretarial Issue Document—Federal Coal Management Program, February 1986 and 51 FR 18884). The comment presented no evidence that the U.S. economy was being harmed by the current level of coal leasing, nor has the Department of the Interior received any evidence that the current land use planning process is unnecessarily restricting the amount of Federal coal available for lease.

The reasons that the Department of the Interior cannot guarantee Federal coal lessees the right to develop their leases have been fully discussed in previous rulemaking documents (See 51 FR 18884, 18885-18886) and no purpose would be served to discuss this issue again.

One other general comment on the proposed rulemaking was received. The comment was concerned about what it believed was the Department of the Interior's superficial and inadequate analysis of valid criticisms of the way in which the unsuitability criteria in the existing regulations are being applied.

The comment suggested that an environmental impact statement should be prepared to analyze the revisions made by the proposed rulemaking before those changes are adopted in a final rulemaking.

The analyses upon which the proposed rulemaking is based are adequate for the publication of this final rulemaking. These analyses include the Final Supplement to the Federal Coal Management Program Environmental Impact Statement (October 1985) and the Secretarial Issue Document (February 1986). The Department of the Interior is of the view that these analyses are an adequate basis for the Secretary's decisions of February 1986. Implementation of the criteria is being addressed in the supplemental program guidance for land use planning. If, in the future, it is determined that further revisions of the regulations concerning the unsuitability criteria are needed, the Department will propose them for public review and comment. Any future changes in the regulations will be based on the experience gained in implementing the revised regulations, just as the proposed rulemaking that is the basis of this final rulemaking was issued after a study of the application of the unsuitability criteria contained in the coal management regulations of 1979 and 1982.

Multiple Use Screen (43 CFR 3420.1-4(e))

In accordance with the February 1986 decisions of the Secretary of the Interior, the proposed rulemaking would modify section 3420.1-4(e) of the existing regulations to increase the number of factors receiving increased emphasis during the multiple use tradeoff screen of land use planning. Two comments on this section of the proposed rulemaking suggested that the list of areas that are to receive increased emphasis be increased by the final rulemaking to include municipal watersheds, fragile and historic lands, renewable resource lands, and natural hazard lands. The final rulemaking has not adopted this suggested change. Municipal watersheds are already protected by criterion number 17 (See 43 CFR 3461.1(q)(1)), and adding this item to those areas that are to receive increased emphasis during the multiple use tradeoff screen would be redundant and confusing. Further, fragile, historic, renewable resource, and natural hazard lands are already considered as part of the multiple use tradeoff screen at a level commensurate with their significance in each case.

The areas suggested in the comment have not been added to the list by the final rulemaking because these areas also can be protected at later stages in the coal leasing process as well as during land use planning. It is not clear that the only way to mitigate impacts to these areas is not to lease them in the first place. During the preparation of regional coal leasing environmental impact statements, mitigating measures may be developed which would allow these areas to be further considered for leasing without sacrificing inherent values in the lands.

One comment on this section was of the view that the adding of factors for increased emphasis during the multiple use tradeoff screen had the effect of adding new unsuitability criteria to the regulations. The final rulemaking adopts the provision of the proposed rulemaking that adds factors for increased emphasis during the multiple use tradeoff screen because the tradeoff screen preserves the discretion of the authorized officer to balance the competing resources. If these had been added as unsuitability criteria, the authorized officer's discretion would have been significantly limited.

Joint Determination (43 CFR 3420.1-6)

The proposed rulemaking would require the Bureau of Land Management to jointly determine with other affected surface management agencies the acceptability of the Bureau's lands for further consideration for coal leasing if mining on those lands could affect the other agency's lands. The proposed rulemaking also requested public comments on the feasibility of implementing the joint determination process through memoranda of understanding. Five comments were submitted on this proposal.

One comment supported using memoranda of understanding to implement the joint determination process, with the other four comments opposed to this concept. Two of the four opposing comments expressed the view that the joint determination process did not go far enough because it did not provide special protection for lands in the National Park System. One of these two comments suggested that the final rulemaking should describe the procedures by which the joint determination process would be conducted. The two other comments that opposed the use of memoranda of understanding did so for different reasons, with one of them suggesting that it was a violation of the multiple use management mandate of the Federal Land Policy and Management Act of 1976. The other comment expressed the view that the proposal was not needed because other surface management agencies were adequately consulted during land use planning when their lands were affected.

The final rulemaking has not adopted any of the suggested changes and retains the language of the proposed rulemaking in § 3420.1-6. The Bureau of Land Management will work closely with the other affected surface management agency or agencies in an effort to resolve differences. If, after thorough negotiations, the issues cannot be resolved between the agencies, they will be resolved through the established issue resolution mechanism of the Department of the Interior.

The proposed joint determination requirement set forth in the proposed rulemaking provides adequate protection for lands in the National Park System and for other sensitive lands. Both the proposed and final rulemakings reflect one of the decisions of the Secretary of the Interior (Number 3), which was designed to protect sensitive environmental values and lands, such as lands in the National Park System, from the adverse effects of coal leasing. The comments on this provision of the proposed rulemaking did not give examples of any instance in which lands in the National Park System have been damaged by the Bureau of Land Management's existing land use planning procedures. Adding the provision for joint determination to the coal leasing regulations will provide an additional step that will be used to protect sensitive lands such as those in the National Park System.

The joint determination provision of the proposed rulemaking does not violate the multiple use mandate of the Federal Land Policy and Management Act. While the Federal Land Policy and Management Act gives the Bureau of Land Management the statutory basis under which it carries out its responsibilities and programs, it is only one of many statutes with which the Bureau must comply. In meeting its responsibilities, the Bureau of Land Management also must comply with the provisions of the clean air and water quality statutes and the National Environmental Policy Act. The Bureau also must consult with other surface management agencies to determine that its activities harmonize, insofar as possible, with the activities of these agencies. The joint determination provision was designed to assist the Bureau in fulfilling these other responsibilities. Even though one of the surface management agencies with whom the Bureau consults in carrying out its responsibilities continues to express concern about being left out of the process that leads to the decision of

how much coal and which coal tracts should be offered for lease, the Secretary of the Interior has determined that the joint determination provision contained in the proposed rulemaking adequately mitigates this concern, and the final rulemaking has adopted the provision without change.

Three comments were received in response to the request in the proposed rulemaking for comments on using memoranda of understanding in lieu of the joint determination provision. One of the comments supported the use of memoranda of understanding, but cautioned that effective implementation was necessary for this process to be effective. The other two comments did not support the use of memoranda of understanding because of their view that an existing memorandum of understanding between the Bureau of Land Management and the National Park Service was vague and non-specific as to details of how the unsuitability determinations would be made. These comments were of the view that the only way to truly protect the interest of another surface management agency was to include the determination process in the regulations.

After carefully reviewing the comments on the issue of memoranda of understanding, the Department of the Interior decided to implement the determination process through inclusion of its provision in the final rulemaking. This decision does not change the Bureau's position that memoranda of understanding are useful in providing guidelines for consultation and cooperation among surface management agencies, and the Bureau will continue to use them in carrying out its programs.

General Comments on Proposed Revisions to the Unsuitability Criteria

Two comments raised concerns about the Bureau of Land Management's use of exceptions and exemptions to the unsuitability criteria, with one of the comments expressing the view that the Bureau uses the exceptions and exemptions to allow far too much acreage to be given further consideration for coal leasing. This comment went on to suggest changing the existing practice of considering those lands suitable pending further study to a practice of considering such lands unsuitable pending further study. The other comment supported the use of the exceptions and exemptions because the land use planning process dropped out too much land for consideration for further leasing with no opportunity for reinstating those lands until the next round of regional activity planning, usually about 4 years later.

The Department of the Interior continues to support the use of exceptions and exemptions to specific unsuitability criteria. Exemptions, where they apply to specific unsuitability criteria, are granted by statute and constitute valid existing rights. Exceptions are applied to unsuitability criteria in cases where inadequate data exist to determine what impacts might occur if general areas of lands containing coal deposits were leased. During the environmental analysis process, when specific parcels of coalbearing lands are analyzed, impacts to the resource covered by the unsuitability criteria can be studied. If the studies show that the impacts to the resources cannot be mitigated acceptably, the lands will be dropped from further consideration for leasing. While the Department does not condone the indiscriminate use of exceptions during land use planning, there are many opportunities later in the coal leasing process to eliminate lands which are not acceptable for leasing. Finally, this comment is factually incorrect in one respect. Lands which have been dropped from further consideration for leasing under the Federal coal management program are dropped from further consideration not just for one round of regional activity planning but until the land use plan itself is reviewed and updated.

Criterion 2 (43 CFR 3461.1(b))

One comment supported the change made by the proposed rulemaking to criterion 2, while another comment disagreed with the proposed revision which would add an exception to criterion 2 making rights-of-way and easements granted after a land use plan was approved subject to being moved in order to facilitate the mining of coal. The comment that opposed the change was of the view that rights-of-way and easements were property rights that should be protected from later activities, such as coal mining. Even if it is assumed that a right-of-way or easement across public lands are property rights, the "right" would be defined according to the limitations or qualifications places on the right-of-way or easement when it is issued. Nevertheless, the holders of those rights-of-way and easements may have spent considerable sums of money in exercising their rights under the right-of-way or easement. Nevertheless, upon careful consideration of this issue, the Department has determined that the final rulemaking will not adopt this provision of the proposed rulemaking. Current land use plans identify several categories of lands for right-of-way purposes, among them lands preferred for right-of-way corridors, areas where rights-of-way are excluded as a use, and areas where rights-of-way would be granted only if there were no alternative. Land managers can work within these categories and notify right-of-way and easement holders of any possible uses that might interfere with the lands being used for a right-of-way or easement. If Federal coal leasing becomes feasible for an area containing a right-of-way or easement, the situation will be worked out on a case-by-case basis, taking into account the requirements of the resource management plan and other relevant factors.

Criterion 9 (43 CFR 3461.1(i))

One comment raised questions concerning the legality of the provision in the proposed rulemaking that would have changed this criterion, while another comment stated that the existing criterion gave adequate protection to threatened and endangered species and their critical habitat. The change would add species proposed as threatened or endangered species and their proposed critical habitats to those threatened and endangered species and designated critical habitats already covered by the criterion. The comment that raised questions concerning the legality of the proposed change also expressed the view that the proposed change was arbitrary and capricious. The proposed change to criterion 9 is not arbitrary, capricious, or illegal. The proposed change arose from concerns about the length of the process by which threatened and endangered species are designated and their habitats determined to be critical. The designation process is managed by the U.S. Fish and Wildlife Service. During the study process, which may take several years, other Federal agencies are proceeding with their mandated programs, some of which may affect the animal and plant species under study. The change in the proposed rulemaking was designed to protect these "study" species and their habitats. Although the Bureau of Land Management consults with the Fish and Wildlife Service during land use planning, the task group studying the application of this unsuitability criterion recommended that the criterion be amended as provided in the proposed rulemaking. The final rulemaking has adopted the provision of the proposed rulemaking without change.

Criterion 15 (43 CFR 3461.1(o))

Two comments were received on the change made by the proposed rulemaking to criterion 15. The change would expand the criterion to include sensitive plant species and would give examples of the types of plant species that might qualify as "sensitive." One comment took issue with the example provided in the proposed rulemaking, that of extreme range. The comment expressed the view that the inclusion of sensitive plants and the example given went beyond the mandate of the Endangered Species Act and would have adverse impacts on coal leasing. The second comment expressed the view that the change contained in the proposed rulemaking was not needed and that the concerns addressed by the proposed rulemaking could be resolved through mitigation measures later in the process.

The change made by the proposed rulemaking was not intended to conform to the requirements of the Endangered Species Act, but to respond to a desire on the part of some conservation groups to recognize certain plant species that did not qualify as either threatened or endangered but, nevertheless, were unique or sensitive in portions of their range because of location, local conditions, or other factors. The term "extremes of range" was meant to describe the condition of a plant species being at the limit of its growing conditions. Such a plant species would be "sensitive" to changes in the environment, whether those changes were natural or man-made. Further, the application of the revised criterion would not necessarily exclude the lands containing the plant species from further consideration for coal leasing, as impacts to the sensitive species might be mitigated. The final rulemaking has adopted the change to criterion 15 made by the proposed rulemaking.

Criterion 20 (43 CFR 3461.1(t)(1))

Three comments objected to the change made by the proposed rulemaking to criterion 20 which allow Indian tribes to recommend new unsuitability criteria to the Secretary of the Interior. Two comments were of the view that the change was not necessary because the Bureau of Land Management consulted with Indian tribes when those tribes were affected by Federal coal leasing activities. The other comment was concerned that the Secretary would adopt unsuitability criteria recommended by an Indian tribe without providing an opportunity for public review and comment.

All groups and individuals, including Indian tribes, are provided the opportunity to recommend unsuitability criteria to the Secretary of the Interior under the Special Rulemaking provision in 43 CFR Part 14. These provisions allow the Secretary to accept petitions from the public for new regulatory provisions, waivers of regulations, or modifications of existing regulations. The change made by the proposed rulemaking merely recognizes this opportunity in the context of the coal management program. The existing regulations require that a recommendation by the State may be adopted only through the rulemaking process. Thus, the change by the proposed rulemaking is adopted and if an Indian tribe recommends new unsuitability criteria to the Secretary, the Secretary must seek public comment on the recommendation as part of the rulemaking process before deciding whether to adopt or reject it. The final rulemaking has adopted this provision of the proposed rulemaking.

The principal author of this final rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes made by this final rulemaking will not affect small entities to any greater or lesser extent than any other entities interested in obtaining Federal coal leases. The changes affect the Federal government by imposing higher standards for use in determining whether coalbearing public lands clear the land use planning process. The changes ideally will result in making coal that can be mined economically and in an environmentally safe manner available to individuals and groups interested in obtaining Federal coal leases and to the public which consumes the coal in meeting its energy needs.

The information collection requirements for 43 CFR Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned approval number 1004-0073.

List of Subjects

43 CFR Part 3420

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3460

Coal, Environmental protection, Government contracts, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*), the Multiple Mineral Development Act (30 U.S.C. 521-531), the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Federal Coal Leasing Amendments Act, as amended (90 Stat. 1983-1092), and the Act of October 30, 1978 (92 Stat. 2073-2075), Parts 3420 and 3460, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

September 30, 1987.

PART 3420—[AMENDED]

1. The authority citation for Part 3420 continues to read:

Authority: 30 U.S.C. 181 et seq., 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 1701 et seq.; 43 U.S.C. 1701 et seq.; 15 U.S.C. 631-644.

§ 3420.1-4 [Amended]

2. Section 3420.1-4(e) is amended by revising paragraph (3) to read:

(3) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values and land uses that are locally, regionally or nationally important or unique and that are not included in the unsuitability criteria discussed in paragraph (e) of this section. Such values and uses include, but are not limited to, those identified in section 522(a)(3) of the Surface Mining Reclamation and Control Act of 1977 and as defined in 30 CFR 762.5. In making these multiple use decisions, the Bureau of Land Management or the

surface management agency conducting the land use planning shall place particular emphasis on protecting the following: Air and water quality; wetlands, riparian areas and sole-source aquifers; the Federal lands which, if leased, would adversely impact units of the National Park System, the National Wildlife Refuge System, the National System of Trails, and the National Wild and Scenic Rivers System.

3. Section 3420.1–6 is revised to read:

§ 3420.1–6 Consultation with Federal surface management agencies.

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, or where the Bureau of Land Management manages lands on which coal development may impact land units of other Federal agencies, the Bureau of Land Management shall consult with the other agency to jointly determine the acceptability for further consideration for leasing of the potentially impacted lands the other agency administers or lands managed by the Bureau of Land Management that may impact lands of another agency.

PART 3460—[AMENDED]

4. The authority citation for Part 3460 continues to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 40 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 43 U.S.C. 1701 et seq.; unless otherwise noted.

§§ 3461.2—3461.5 [Redesignated as §§ 3461.1—3461.4]

5. Sections 3461.2 through 3461.5 are renumbered §§ 3461.1 through 3461.4 and § 3461.1 is renumbered § 3461.5 and is amended by:

§ 3461.1 [Redesignated as 3461.5 and Amended]

A. Amending paragraph (a)(3) by removing the last sentence of that paragraph in its entirety;

B. Amending paragraph (c)(1) by adding immediately after the phrase *"Criterion Number 3."* the sentence "The terms used in this criterion have the meaning set out in the Office of Surface Mining Reclamation and Enforcement regulations at Chapter VII of Title 30 of the Code of Federal Regulations.";

C. Revising paragraph (e) to read:

(e)(1) *Criterion Number 5.* Scenic Federal lands designated by visual resource management analysis as Class I (an areas of outstanding scenic quality or high vessel sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that surface coal mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator has made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977, or which include operations on which a permit has been issued.

D. Amending paragraph (g)(1) by removing from where it appears the phrase "All publicly owned places on Federal lands which are included" and replacing it with the phrase "All publicly or privately owned places which are included";

E. Amending paragraph (h)(2) by removing paragraph (i) in its entirety and by renumbering paragraphs (ii) and (iii) as paragraphs (i) and (ii), respectively;

F. Amending paragraph (i)(1) by removing from where it appears the phrase "Federally designated critical habitat for threatened or endangered animal and plant species, and habitat" and replacing it with the phrase "Federally designated critical habitat for listed threatened or endangered plant and animal species, and habitat proposed to be designated as critical for listed threatened or endangered plant and animal species or species proposed for listing, and habitat";

G. Revising paragraph (o)(1) to read:

(o)(1) *Criteron Number 15.* Federal lands which the surface management agency and the state jointly agree are habitat for resident species of fish, wildlife and plants of high interest to the state and which are essential for maintaining these priority wildlife and plant species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

(ii) Winter ranges crucial for deer, antelope, and elk;

(iii) Migration corridor for elk; and

(iv) Extremes of range for plant species; and

H. Amending paragraph (t) by:

(1) Revising paragraph (1)(i) to read:

(i) Proposed by the State or Indian tribe located in the planning area, and; and

(2) Amending paragraph (2)(ii) by removing from where is appears the phrase "the state, the surface management agency" and replacing it with the phrase "the State or affected Indian tribe, the surface management agency".

§ 3461.2–1 [Amended]

6. Section 3461.2–1(b)(1), formerly § 2461.3–1, is revised to read:

(b)(1) The authorized officer shall make his/her assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when the data needed to make an assessment with reasonable certainty would be generated. It the case of Criterion 19, application shall be made before approval of the mining permit. In the case of other deferred criteria, application shall be made prior to finalizing the environmental analysis for the area being studied for coal leasing. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of Criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his/her assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment on the adequacy of the application as required by paragraph (a)(2) of this section.

[FR Doc. 87–28117 Filed 12–7–87; 8:45 am]
BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATE: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESS: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 US.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance preimum rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas	Pulaski (FEMA Docket No. 6916).	City of Little Rock	July 13, 1987, July 20, 1987, *Arkansas Democrat.*	The Honorable Marty Shackelford, Mayor of the City of Little Rock, City Hall, 500 West Markham, Little Rock, Arkansas 72201.	June 30, 1987	050181 D
Florida	Pasco (Docket No. FEMA-6916).	Unincorporated Areas	July 23, 1987, July 30, 1987, *St. Petersburg Times (Pasco Times).*	The Honorable John J. Gallagher, County Administrator, Pasco County, Pasco County Government Center, 7530 Little Road, New Port Richey, Florida 33553.	July 8, 1987	120230
Minnesota	Wright (Docket No. FEMA-6916).	City of DeLano	June 27, 1987, July 3, 1987, *Delano Eagle.*	The Honorable Gordon Wetter, Mayor, City of DeLano, City Hall, 205 Bridge Avenue, DeLano, Minnesota 55328.	June 19, 1987	270539
Tennessee	Shelby (Docket No. FEMA-6919).	City of Memphis	August 17, 1987, August 24, 1987, *The Daily News.*	The Honorable Richard C. Hackett, Mayor, City of Memphis, City Hall, 125 North Mid America Mall, Memphis, Tennessee 38103.	July 21, 1987	470177
Texas	Harris (FEMA Docket No. 6916).	Unincorporated areas	June 22, 1987, June 29, 1987, *Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.	June 10, 1987	480287

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: November 30, 1987.

[FR Doc. 87-28068 Filed 12-7-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6921]

Changes in Flood Elevation Determinations; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATE: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESS: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provsions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas	Denton	City of Coppell	October 9, 1987, October 16, 1987, The Citizens Advocate.	The Honorable Lou Duggan, Mayor of the City of Coppell, P.O. Box 478, Coppell, Texas 75019.	September 24, 1987	480170
Texas	Tarrant	City of Fort Worth	Octoer 9, 1987, October 16, 1987, *Fort Worth StarTelegram.*	The Honorable Bob Bolen, Mayor of the City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	October 2, 1987	480596
Texas	Collin and Denton	City of Frisco	December 2, 1987, December 9, 1987.	The Honorable Randy Elliot, Mayor of the City of Frisco, P.O. Box 117, Frisco, Texas 75034.	November 20, 1987	480134
Texas	Harris	Unincorporated Areas	October 8, 1987, October 15, 1987, *Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.	Octoer 2, 1987	480287
Texas	Fort Bend, Harris, and Montgomery Counties.	City of Houston	November 20, 1987, November 27, 1987, *Houston Chronicle.*	The Honorable Kathryn J. Whitmire, Mayor of the City of Houston, P.O. Box 1562, Houston, Texas 77251.	November 2, 1987	480296
Texas	Bexar	City of Leon Valley	October 23, 1987, October 30, 1987, *The Northwest Leader.*	The Honorable Irene Baldridge, Mayor of the City of Leon Valley, 6400 El Verde Road, San Antonio, Texas 78238.	October 7, 1987	480042

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas	Dallas	City of Mesquite	October 15, 1987, October 22, 1987. *Mesquite Daily News.*	The Honorable George Venner, Sr., Mayor of the City of Mesquite, P.O. Box 137, Mesquite, Texas 75149.	October 6, 1987	485490
Texas	Tarrant	Unincorporated areas	November 9, 1987, November 16, 1987. *Fort Worth Star-Telegram.*	Mr. Jim Stewart, Director of Public Works for Tarrent County, 100 East Weatherford, Fort Worth, Texas 76102.	October 29, 1987	480582

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: November 30, 1987.

[FR Doc. 87-28069 Filed 12-7-87; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATION

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Chula Vista (city), San Diego County (FEMA Docket No. 6915)	
San Diego Bay:	
At Chula Vista	*6
Telegraph Canyon Creek:	
Approximately 3,250 feet southwest of the intersection of Telegraph Canyon Road and Otay Lakes Road	*377
Approximately 1,150 feet northeast of the intersection of Rutgers Avenue and Telegraph Canyon Road	*456
Approximately 1,400 feet southwest of the intersection of Otay Lakes Road and Janal Drive	*499
Approximately 425 feet northeast of the intersection of Otay Lakes Road and Rancho Janal Drive	*530
Maps are available for inspection at the City of Chula Vista Engineering Department, 276 Fourth Avenue, Chula Vista, California.	
CONNECTICUT	
South Windsor (town), Hartford County (FEMA Docket No. 6915)	
Farm Brook: Downstream side of Oakland Road Bridge	*127
Maps available for inspection at the Town Clerk's Office, Town Hall, South Windsor, Connecticut.	
GEORGIA	
Darien (city), McIntosh County (FEMA Docket No. 6915)	
Atlantic Ocean/Altamaha River/Darien River:	
About 500 feet west of the intersection of Broad Street and Screven Street	*12
About 0.56 mile south of the intersection of Wayne Street and Second Street	*14
Maps available for inspection at the City Hall, Darien, Georgia.	
ILLINOIS	
Cairo (city), Alexander County (FEMA Docket No. 6915)	
Upper Mississippi River:	
About 0.85 mile downstream of U.S. Route 60	*331
About 1700 feet upstream of Interstate 57	*335
Ohio River:	
About 1 mile downstream of U.S. Route 60	*331
About 1200 feet upstream of Illionois Central Gulf Railroad	*331
Ponding from Interior Drainage: At Goose Pond Pumping Station	*307
Maps available for inspection at the City Hall, 1501 Washington Avenue, Cairo, Illinois.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
LOUISIANA	
Lafayette (city), Lafayette Parish (FEMA Docket No. 6918)	
Grand Avenue Coulee: At intersection of Wayside Drive and North Philo Drive	*29
Maps available for inspection at the Acadian Metrocode, 707 West University, Lafayette, Louisiana.	
Lafayette Parish, Unincorporated Areas (FEMA Docket No. 6918)	
Grand Avenue Coulee: Approximately 100 feet southeast of intersection of North Dominque Avenue and West Congress Street	*29
Maps are available for inspection at the Acadian Metrocode, 707 West University, Lafayette, Louisiana.	
West Monroe (city), Ouachita Parish (FEMA Docket No. 6915)	
Black Bayou:	
Downstream side of Glennwood Drive	*73
Approximately 3,000 feet upstream of Glennwood Drive	*80
Gravel Pit Branch:	
Approximately 100 feet upstream of confluence with Black Bayou	*80
Approximately 150 feet upstream of Interstate Route 20	*86
Highland School Branch:	
At confluence with Black Bayou	*76
Approximately 3,050 feet upstream of McMillan Road	*96
Black Bayou Tributary:	
Approximately 50 feet upstream of confluence with Black Bayou	*80
Approximately 50 feet downstream of corporate limits	*92
Maps available for inspection at the City Engineer's Office, P.O. Box 2105, Monroe, Louisiana.	
NEW JERSEY	
Bergenfield (Borough), Bergen County (FEMA Docket No. 6915)	
Hirschfeld Brook:	
Downstream side of North Prospect Avenue	*45
Upstream side of Coopers Pond Dam	*50
Approximately 80 feet upstream of West Church Street	*54
Approximately 40 feet upstream of West Main Street	*55
Approximately 70 feet upstream of Roosevelt Avenue	*58
Approximately 300 feet upstream of downstream CONRAIL bridge	*69

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Hirschfeld Brook Tributary:	
Approximately 140 feet downstream of downstream side of culvert	*57
Approximately 30 feet downstream of Dick Street	*70
Upstream side of New Jersey Avenue	*88
Maps available for inspection at the Borough Clerk's Office, 198 North Washington Avenue, Bergenfield, New Jersey.	
Garwood (Borough), Union County (FEMA Docket No. 6915)	
Garwood Brook:	
Upstream side of Oak Street	*78
At upstream corporate limits	*94
Maps available for inspection at the Construction Department, Municipal Building, 403 South Avenue, Garwood, New Jersey.	
Green Brook (Township), Somerset County (FEMA Docket No. 6911)	
Green Brook:	
Downstream corporate limits	*40
Downstream side of Green Brook Road	*41
Upstream side of Green Brook Road	*42
Upstream side of Madison Avenue	*52
Upstream corporate limits	*57
Municipal Brook: At confluence with Green Brook	*53
Maps available for inspection at the Township Clerk's Office, Municipal Building, 111 Greenbrook Road, Green Brook, New Jersey.	
Livingston (Township), Essex County (FEMA Docket No. 6915)	
Canoe Brook:	
Approximately 520 feet upstream of confluence with Bear Brook	*224
Upstream side of West Oakwood Avenue	*276
Upstream side of Mount Pleasant Avenue	*317
Approximately 0.5 mile upstream of Laurel Avenue	*435
* Mean Sea Level	
Maps available for inspection at the Township Engineer's Office, 357 South Livingston Avenue, Livingston, New Jersey.	
PENNSYLVANIA	
Caln (township), Chester County (FEMA Docket No. 6915)	
Valley Run:	
Approximately 1,340 feet upstream of Bondsville Road	*284
Downstream side of Barley Sheaf Road	*319
Maps available for inspection at the Municipal Building, 253 Municipal Drive, Thorndale, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
TEXAS	
Cedar Hill (city), Dallas County (FEMA Docket No. 6915)	
Bee Branch:	
At downstream side of Duncanville Road	*667
At downstream side of dam	*706
Approximately 500 feet upstream of Calvert Drive	*740
Maps available for inspection at the City Manager's Office, Cedar Hill, Texas.	
Fort Bend County (unincorporated areas) (FEMA Docket No. 6915)	
Dry Creek:	
At Berdett Road	*74
Approximately 650 feet upstream of FM 2977	*83
At County boundary	*92
Maps are available for inspection at the Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.	
Friendswood (city), Galveston County (FEMA Docket No. 6915)	
Mary's Creek:	
At confluence with Clear Creek	*23
Approximately 300 feet downstream of Dunbar Estates Drive	*23
At upstream corporate limits	*26
Cowart Creek:	
At confluence with Clear Creek	*19
Approximately 320 feet upstream of Sunset Drive	*20
At upstream corporate limits	*30
Chigger Creek:	
At confluence with Clear Creek	*15
Approximately 4,000 feet downstream of Windwood Drive	*25
At upstream corporate limits	*37
Clear Creek: (A100-00-00):	
At downstream corporate limits	*14
Upstream side of Whispering Pines	*20
At confluence of Mary's Creek	*23
At upstream corporate limits	*32
Turkey Creek (A119-00-00).	
At confluence with Clear Creek	*26
At upstream corporate limits	*26
Tributary 0.16 to Turkey Creek (A119-02-00):	
At confluence with Turkey Creek	*26
At upstream corporate limits	*29
Halls Road Ditch (A120-00-00):	
At confluence with Clear Creek	*27

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD). Modified
At upstream corporate limits	*30
Cedar Gully (A118-00-00):	
At confluence with Clear Creek	*22
At upstream corporate limits	*22
Maps available for inspection at the Public Works Building, 1306 Deepwood, Friendswood, Texas.	
Lufkin (city), Angelina County (FEMA Docket No. 6918)	
Hurricane Creek East Tributary East Tributary:	
Confluence with Hurricane Creek East Tributary East	*245
Approximately 1,020 feet upstream of confluence with Hurricane Creek East Tributary East	*251
Maps available for inspection at the City Hall, P.O. Box 190, Lufkin, Texas.	
Mesquite (city), Dallas County (FEMA Docket No. 6918)	
Stream 2J2:	
Approximately 480 feet downstream of Brookhaven Drive	*492
Approximately 370 feet downstream of Hollowbend Drive	*498
Maps available for inspection at the City Hall, 711 North Galloway, Mesquite, Texas.	
Montgomery County (unincorporated areas) (FEMA Docket No. 6915)	
Bens Branch:	
At County boundary	*72
Approximately 3,000 feet downstream of Sorters Road	*90
Bens Branch Tributary No. 1: At confluence with Bens Branch	*77
Bens Branch Tributary No. 2:	
At confluence with Bens Branch	*81
Approximately 700 feet upstream of Martin Drive	*83
Maps available for inspection at J.D. Blanton's office, 326½ North Main, Conroe, Texas.	
VIRGINIA	
Waynesboro (city), Independent City (FEMA Docket No. 6915)	
Pratt's Run:	
At confluence with South River	*1,307
Approximately 1.1 miles upstream of confluence with South River	*1,340
At upstream corporate limits	*1,385
Jones Hollow:	
At confluence with South River	*1,284

PROPOSED BASE (100-YEAR) FLOOD ELEVATION—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD). Modified
Approximately 0.9 mile upstream of confluence with South River	*1,320
Approximately 1,200 feet upstream of Kirby Avenue	*1,336
Approximately 0.5 mile upstream of Kirby Avenue	*1,356
South River:	
Approximately 1.1 miles downstream of Hopeman Parkway	*1,255
Approximately 200 feet downstream of Second Street	*1,272
At upstream corporate limits	*1,332
Maps available for inspection at 250 South Wayne Avenue, Waynesboro, Virginia.	
Oregon	
Lane County (Unincorporated Areas) (FEMA Docket No. 6915)	
Coast Fork, Willamette River:	
Approximately 5,830 feet downstream of State Highway 99	*616
Approximately 3,175 feet downstream of State Highway 99	*621
Approximately 825 feet downstream of State Highway 99	*629
Downstream of Woodson Place	*635
Downstream of Main Street	*641
Approximately 170 feet downstream of Harrison Avenue	*647
Downstream of State Highway 99	*651
Downstream of the Southern Pacific Railroad	*652
Approximately 2,550 feet upstream of the Southern Pacific Railroad	*663
Downstream of London Road	*680
Long Tom River:	
Approximately 2,400 feet upstream of State Highway 126	*385
Approximately 3,600 feet upstream of State Highway 126	*385
Approximately 9,000 feet upstream of State Highway 126	*387
Maps are available for inspection at the Department of Public Works, 125 East 8th Street, Eugene, Oregon.	

Issued: November 30, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-28070 Filed 12-7-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-200]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: On January 14, 1987, the Secretary of Transportation delegated certain responsibility to the Federal Highway Administrator concerning the construction of Interstate H-3 between designated points in Hawaii. The *Code of Federal Regulations* does not reflect this delegation, and therefore a technical correction is necessary.

DATE: Effective Date: January 14, 1987.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: On January 14, 1987, then Secretary Dole delegated to the Federal Highway Administrator authority under section 114 of Pub. L. 99-591 (October 30, 1986) concerning approval of the construction of Interstate Highway H-3 between Halawa interchange to, and including, the Halekou interchange (a distance of approximately 10.7 miles).

The *Code of Federal Regulations* does not reflect this delegation, and therefore a technical correction is necessary. A copy of the January 14, 1987 delegation is available from the Department.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.** Since the authority was initially delegated by the Secretary on January 14, 1987, the delegation is effective as of that date.

Under title 49 CFR 1.57(l) the General Counsel has authority to make corrections to regulations of the Office of the Secretary. In accordance with that authority, the following correction is made.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.48 is amended by adding a new paragraph (ff) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(ff) Carry out the functions vested in the Secretary of Transportation by section 114 of the "Act Making Continuing Appropriations For Fiscal Year 1987 And For Other Purposes," Pub. L. 99-591, October 30, 1986, relating to construction of Interstate highway H-3 in Hawaii.

Issued on: November 30, 1987.

B. Wayne Vance,

General Counsel, U.S. Department of Transportation.

[FR Doc. 87-27971 Filed 12-7-87; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: The agency denies a petition for rulemaking from the Parker Hannifin Corporation requesting two changes to the requirements of Federal Motor Vehicle Safety Standard No. 106, *Brake Hoses,* for air brake hoses and assemblies. First, Parker Hannifin asked that NHTSA amend Standard 106 to adopt the performance requirements of SAE Standard J1131, to ensure that manufacturers of air brake hoses will comply with the applicable requirements of J1131 on a compulsory, and not voluntary, basis. Second, the petitioner requested that NHTSA set a marking requirement for hoses used with "push-in" fittings to ensure that fittings would be properly inserted into the hoses. The agency has found no data or supporting information that indicate a safety need for the petitioner's suggested amendments. Therefore, the petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Vern Bloom, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-5277.

SUPPLEMENTARY INFORMATION: This notice denies a petition for rulemaking from the Parker Hannifin Corporation requesting two changes to the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses,* for air brake hoses and assemblies. (Parker Hannifin's petition concerns the type of brake hoses that are made from plastic tubing. For convenience, we will refer to these as "air brake tubing.") First, the petitioner asked that NHTSA amend Standard 106 to adopt the performance requirements of the Society of Automotive Engineers (SAE) Standard J1131, *Performance Requirements for SAE J844d Nonmetallic Tubing and Fitting Assemblies Used in Automotive Air Brake Systems,* to ensure that manufacturers of air brake hoses will comply with the applicable requirements of J1131 on a compulsory, and not voluntary, basis. Second, the petitioner requested that NHTSA set a marking requirement for hoses used with "push-in" fittings to ensure that fittings would be properly inserted (i.e., pushed deep enough) into the hoses.

Additional Performance Requirements

According to the petitioner, although not required by NHTSA, domestic manufacturers of air brake tubing currently voluntarily ensure that their products comply with the performance requirements of J1131. The petitioner asserts that the requirements of J1131 "result from actual duty cycles and expected road hazards encountered in various parts of the U.S." The petitioner argued that the voluntary standard and FMVSS No. 106, taken together, have a proven safety record justifying their continued application to all air brake tubing sold in this country. The petitioner expressed a concern that, because compliance with SAE J1131 is only voluntary, "foreign manufacturers are in a position to use material (air-brake fittings and tubing) which comply with the D.O.T. 106 Standard only on equipment sold in the U.S.A." Parker Hannifin believed that permitting the manufacture and sale of air brake tubing that do not meet SAE J1131 "may create additional and unwanted safety risks." In addition, Parker Hannifin said it is economically unfair that compliance with SAE J1131 is not mandatory for some manufacturers. The petitioner stated: "As it is possible to design these materials (air-brake fittings and tubing) to achieve lower manufacturing costs if only the D.O.T. 106 Standards are to be met, this creates an unfair economic disadvantage to U.S. suppliers and users." In order to ensure that the requirements of SAE J1131 are met by all brake tubing manufacturers. Parker Hannifin requested that FMVSS No. 106 include the requirements of the SAE standard.

NHTSA is not persuaded by the petitioner that adoption of J1131 is warranted. First, the petitioner did not substantiate its claim that "domestic" and "foreign" manufacturers produce brake hoses that meet different performance specifications, or that hoses produced by the latter are substandard as compared to the hoses manufactured domestically. The agency's review of data obtained through our enforcement division found no evidence that distinctions can be drawn between domestic- and foreign-manufactured hoses, based on hose performance in certification tests and on-road use. In fact, the compliance record for air brake tubing performance as a whole appears to be quite good. Second, the petitioner provided no safety data or other information supportive of its implicit argument that FMVSS No. 106 is insufficient in and of itself to ensure that proper safety levels are met. Any brake hose, including those installed in a motor vehicle, must pass all the performance requirements set forth in FMVSS No. 106 to be sold in this country. The agency is aware of no indications that requiring compliance with those performance requirements alone enables the marketing of unsafe hoses whose sale in this country would have been otherwise prevented if compliance with SAE J1131 were mandatory.

The petitioner claims that manufacturers who meet both FMVSS No. 106 and SAE J1131 are at an "unfair economic disadvantage" vis-a-vis manufacturers who meet only FMVSS No. 106. Since NHTSA does not require any manufacturer to comply with J1131, manufacturers who do meet that standard do so on a voluntary basis. The agency cannot adopt J1131 to reduce the effects of an action that some

manufacturers have chosen to take voluntarily. Only if there is a safety need can the agency adopt additional requirements.

The petitioner has argued that there is a safety need to ensure that all air brake tubing manufactured for sale in this country meet SAE J1131. NHTSA has been unable to substantiate this claim. Because there are no data or other information available to support amending Standard No. 106 in the manner requested by the petitioner, the agency denies the first part of the petition. We note, however, that the agency carefully reviews any new developments in brake hose manufacture. If new information indicates a safety need to consider amending the requirements of Standard No. 106, the agency will not hesitate to take appropriate action.

Marking Requirement

The second part of the petition requested NHTSA to set a marking requirement for hoses used with "push-in" fittings to ensure that fittings would be properly inserted (i.e., pushed deep enough) into the hoses. According to the petitioner, one of the factors affecting the compliance of an air brake assembly with Standard No. 106's tensile requirement is the "insertion force." Parker Hannifin believed that an "indicator mark" was needed on the outside of the hose that would act as a "visual gage * * * to assure proper insertion depth." The petitioner suggested that, "All suppliers of air-brake tubing must be compelled to supply this visual gauge, and/or information relating to its use."

NHTSA has found no data indicating a need for the marking requirement requested by the petitioner. Our review of consumer complaint and defect records found no significant problems with air brake tubing separating from their end fittings that would support petitioner's claim that an "indicator mark" is necessary to assure proper insertion of the end fitting. Further, air brake hoses typically are capable of being used with several different types of fittings. NHTSA believes it is likely that it would be impractical, therefore, to require marking the hose with an "indicator mark" that might be appropriate only for a certain type of fitting. For these reasons, the agency denies the second part of the petition.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued on December 1, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-28078 Filed 12-7-87; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies the petition of General Motors Corporation (GM) for an amendment to Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* to exempt center highmounted stop lamps from the 5 degree down photometric test points if the lamp is mounted on a vehicle at less than 35.5 inches above the pavement. GM argued that an amendment of this nature would relax a design restriction without reducing the effectiveness of the lamp. The petition is being denied because GM has not supported its argument that the effectiveness of the lamp would not be reduced in certain driving situations.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA, (202-366-5271).

SUPPLEMENTARY INFORMATION: Figure 10 of Motor Vehicle Safety Standard No. 108 specifies minimum photometric requirements for center highmounted stop lamps, that must be met at specified test points, including certain points at a position 5 degrees below the horizontal. After this requirement was adopted on October 18, 1983 (48 FR 48235), GM petitioned for reconsideration of the 5 degree down requirement, stating that there may be some current vehicle configurations and mounting locations where these test points might not be visible. This could exist when a lamp is mounted at the bottom of the glazing, and a spoiler or luggage rack is mounted on the deck lid. It therefore requested an amendment that these test points need not be met if the lamp "is visible at a point 10 feet from its lens and 35.5 inches above ground but is not visible at the 5 degree down test point." According to GM, 35.5 inches above the ground is the driving eye height for 95% of the operators of GM's vehicles. The agency denied GM's petition for reconsideration on May 17, 1984 (49 FR 20818) with these words:

Such an amendment, as NHTSA interprets it, would eliminate all photometric requirements below the horizontal for all vehicles whose high-mounted lamps were mounted less than 46 inches from the ground. Visibility of the lamp from this angle could be important for viewing vehicles from the rear when coming over a hill. The agency has reduced its restrictions regarding mounting location, and if a lamp mounted in the lowest permissible position would not meet the 5 degree test points, the lamp could be located to a higher height where the requirements may be met.

Further, the photometric requirements do not specify that the entire lens must be visible from each 5 degree down test point. Instead, they specify the intensity of light that must be visible from those points. Therefore, the requirement can be met with a lamp whose lens is partially obscured by a portion of the vehicle when viewed from some of the test points.

On March 23, 1987, GM again petitioned NHTSA for rulemaking to amend the requirements for meeting the 5 degree down test points. Specifically, the company stated that if the lamp were mounted at a height between 35.5 inches and 46 inches the 5 degree down specifications should "be applied at the down angle formed by a line extending from the geometric center of the * * * lens through a point located horizontally 10 feet from the lens and 35.5 inches above the ground." If the lamp were mounted below 35.5 inches, the specifications would not apply.

GM supported its petition with the observation that the nonobstruction requirement had caused it to raise the height of the lamp on certain carlines, and in some cases to develop more than one version of the lamp. An example of the latter is the optional luggage rack for which a specialized lamp has been developed. It believes its proposed revision to Standard No. 108 "will permit motor vehicle manufacturers increased design and packaging flexibility without compromising the intended function of the device."

The agency has carefully reviewed GM's petition. It did not address in any manner the reason its earlier petition was denied, and therefore has presented no plausible reason why the existing requirements should be modified. Under GM's suggested approach, a lamp at 35.5 inches mounting height would have no effective downward directed light. As a result, when the following car is at any lower elevation, even on a very slight hill crest, a driver whose driving eye height is 35.5 inches would not be able to see the light. Expressed in another manner, on a hill with an 8 percent grade, a center lamp mounted at 35.5 inches on a car at the crest needs to produce sufficient light at 1.3 degrees

below horizontal for a driver (whose driving eye height is 35.5 inches) to see it when he is 50 feet behind it; at 2.6 degrees for him to see it at 100 feet, etc. According to GM's own data, at least 5 percent of the operators of GM's vehicles have a driving eye height of 35.5 inches or less. Therefore, visibility of the light would be reduced under GM's requested amendment.

Furthermore, NHTSA does not encourage mounting the lamp at lower locations. It has been found to be especially effective in reducing rear end collisions involving more than two vehicles, probably because in higher locations the lamp on a leading vehicle can be viewed by the driver of a trailing vehicle through the windows of a vehicle between the two. Mounting the lamp lower than the top of a typical deck lid would reduce its effectiveness in this mode of crash prevention.

At the conclusion of its technical review, NHTSA has determined that there is not a reasonable possibility that at the end of a rulemaking proceeding Standard No. 108 would be amended in the manner petitioned for, and the petition is hereby denied.

The program official and attorney principally responsible for the development of this agency position are Kevin Cavey and Taylor Vinson, respectively.

(Secs. 103, and 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, and 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on December 1, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-28080 Filed 12-7-87; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1007, 1103, 1150, 1160, 1162, 1169, 1171, 1177, 1180, and 1182

[Ex Parte No. 246; Sub-No. 5]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services; 1987 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In this decision the Commission adopts modifications of its costing and update formulas for calculating fees, as proposed at 52 FR 32573 (8-28-87) and as corrected at 52 FR 34819 (9-15-87). The 1987 user fee update is adopted. The fee for self-insurance applications at 49 CFR 1002.2(f)(77) is recalculated and a new fee for petitions for substitution of applicant at 49 CFR 1002.2(f)(15) is adopted.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-275-7428.

For Costing Information:

William W. England, 202-275-7472

TDD for the hearing impaired: 202-275-1721.

SUPPLEMENTARY INFORMATION: The Commission is required by its regulations at 49 CFR 1002.3 to update user fees annually. After a review of the comments submitted by the National Motor Freight Traffic Association, the Household Goods Carrier Bureau and the American Bus Association, the Commission has determined that the proposed modifications of its fee costing and update formula, the 1987 fee update, and the proposed fee item modifications should be adopted.

Further information is contained in the Commission's decision which may be purchased from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 202-289-4357. (Assistance for the hearing impaired is available through TDD services, 202-275-1721.)

This decision will not have a significant impact upon the quality of the human environment or conservation of energy resources. Nor will it have a significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Parts 1002, 1007, 1103, 1150, 1160, 1162, 1169, 1171, 1177, 1180, and 1182

Administrative practice and procedure.

It is ordered:

Title 49 of the Code of Federal Regulations is amended as set forth below. These rule changes will be effective on February 1, 1988.

Decided: November 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons. Commissioner Sterrett dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for Part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "$3.00" in paragraph (a) is revised to read "$5.00".

3. In § 1002.1, the dollar amount of "$11.00" in paragraph (c) is revised to read "$12.00".

4. In § 1002.1, the table in paragraph (f)(6) is revised to read as follows:

GS-1	$5.22
GS-2	5.69
GS-3	6.41
GS-4	7.20
GS-5	8.05
GS-6	8.97
GS-7	9.97
GS-8	11.04
GS-9	12.20
GS-10	13.43
GS-11	14.76
GS-12	17.69
GS-13	21.03
GS-14	24.85
GS-15 & above	29.23

5. In § 1002.2, paragraph (f) is revised to read:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products.	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64.	2,000
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite or the change of a highway name or number.	30
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923.	30
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107-1160.114.	200
(7) An application for authority to deviate from authorized regular route authority 49 U.S.C. 10923(a).	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b).	90
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1).	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue.	17

Type of proceedings	Fees
(11) Request for name change of carrier, broker, or household goods freight forwarder.	7
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4.	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5).	60
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding.	20
(16) [Reserved]	
Part II: Non-Rail Applications To Discontinue Transportation	
(17) A notice or petition to discontinue ferry service 49 U.S.C. 10908.	8,100
(18) A petition to discontinue motor carrier of passenger transportation in one state.	500
(19) [Reserved]	
Part III: Non-Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic.	1,500
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	750
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706.	9,900
(23) An application for approval of an amendment to a non-rail rate association agreement:.	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.	150
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	200
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d).	150
(27) A petition for exemption under 49 U.S.C. 11343(e).	200
(28)–(32) [Reserved]	
Part IV: Rail Applications for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	2,600
(ii) Exempt transaction under 49 CFR 1150.31.	550
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).	3,200
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii).	1,800
(36)–(37) [Reserved]	
Part V: Rail Applications To Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act, bankrupt railroads or exempt abandonments under 49 CFR 1152.50).	2,100
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.	150
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40.	650
(41) Exempt abandonments. 49 CFR 1152.50.	750
(42) A notice or petition to discontinue passenger train service.	8,100
(43) [Reserved]	
Part VI: Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.	6,800
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342.	4,700
(46) An application for two or more carriers to consolidate or merge their properties or franchises or a part thereof, into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)].	550
(v) Responsive application	2,200
(47) An application for a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343..	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)].	550
(v) Responsive application	2,200
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343..	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)].	550
(v) Responsive application	2,200
(49) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	100,000
(ii) Significant transaction	20,000
(iii) Minor transaction	2,200
(iv) Exempt transaction [49 CFR 1080.2(d)].	550
(v) Responsive application	2,200
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a) (2) or (b).	20,000
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706.	25,100
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706.	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.	250
(54)(i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for exemption for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175 49 U.S.C. 11301.	1,200
(ii) An exempt transaction under 49 CFR 1175.	550
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505.	650
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40–49, 45 U.S.C. 915.	1,400
(57)–(59) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods.	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A).	1,500
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.	500
(ii) All other petitions for declaratory order.	850
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increase.	5,500
(64) A petition for exemption from filing tariffs by water and bus carriers.	150
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	2,500
(66) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501.	500
(67) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501.	500
(68)–(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	400
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	40
(74) The filing of tariffs, rate schedules and contracts including supplements.	7 per series transmitted.
(75) Special docket application from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less).	50
(76) Informal complaint about rail rate application.	100
(77) An application for original qualification as self-insurer.	250
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a surety bond.).	10 per accepted certificate or instrument submitted in lieu of a broker surety bond)
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR Part 1057.	300
(80) A petition for reinstatement of revoked operating authority.	40
(81)–(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application.	200
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).	13 per document.
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings.	1,000
(86) Informal opinions about rate applications (all modes).	40
(87)–(95) [Reserved]	

Type of proceedings	Fees
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	10 per delivery.
(97) Request for service list for proceedings.	7 per list.
(98) Requests for copies of the one-percent carload waybill sample.	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	14 per movement verified.
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.	50

6. In § 1002.3, paragraphs (d)(2) through (d)(4) are revised to read as follows:

§ 1002.3 Updating user fees.

* * * * *

(d) * * *

(2) Operations overhead shall be developed each year on the basis of current relationships existing on a weighted basis, for indirect labor applicable to the first supervisory work centers directly associated with user fee activity. Actual updating of operations overhead will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead costs.

(3)(i) Office general and administrative costs shall be developed each year on the basis of current level costs, i.e., dividing actual office general and administrative costs for the current fiscal year by total office costs for the Offices and Bureaus directly associated with user fee activity. Actual updating of office general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) Commission general and administrative costs shall be developed each year on the basis of current level costs; i.e., dividing actual Commission general and administrative costs for the current fiscal year by total agency expenses for the current fiscal year. Actual updating of Commission general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of material in the **Federal Register** or ICC Register.

* * * * *

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

7. In Part 1007, the authority citation is revised to read:

Authority: 5 U.S.C. 552, 553, and 559.

§ 1007.5 [Amended]

8. In § 1007.5 paragraph (f), the phrase "of 10 cents per letter size or legal-size exposure duplicated electrostatically" is revised to read "set forth in 49 CFR §1002.1(d)".

PART 1103—PRACTITIONERS

9. The authority citation for Part 1103 continues to read:

Authority: 49 U.S.C. 10308 and 10321; 5 U.S.C. 559.

10. In § 1103.3 paragraphs (d), (k), (l), and (m) are revised to read as follows:

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

* * * * *

(d) *Application fee.* Each application filed pursuant to this rule must be accompanied by the non-refundable fee in the amount set forth in 49 CFR 1002.2(f)(100). Payment must be made either by check or money order payable to the Interstate Commerce Commission. Cash payment will not be accepted.

* * * * *

(k) Failing or postponing the examination. Applicants who fail the examination may reapply by submitting a request in writing with an additional filing fee in the amount set forth in 49 CFR 1002.2(f)(100). Applicants who postpone taking the examination three times without showing good cause will have their applications returned.

(l) The filing fee in the amount set forth in 49 CFR 1002.2(f)(100) is not refundable.

(m) Any application resubmitted to the Commission after being returned must be accompanied by a filing fee in the amount set forth in 49 CFR 1002.2(f)(100).

* * * * *

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE OR OPERATE RAILROAD LINES

11. The authority citation for Part 1150 is revised to read:

Authority: 49 U.S.C. 10321, 10326, 10901, 10903, and 10505; 5 U.S.C. 553 and 559.

§ 1150.10 [Amended]

12. In § 1150.10, paragraph (b) is amended by removing the sentence "A $700 fee is required to file an application. (49 CFR 1002.2(d)(1).)" and substituting in its place "A filing fee in the amount set forth in 49 CFR 1002.2(f)(33) is required to file an application.".

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

13. The authority citation for Part 1160 continues to read:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559; and 16 U.S.C. 1456.

14. In § 1160.64, paragraph (b) is revised to read as follows:

§ 1160.64 Petition to clarify or interpret formally an operating authority.

* * * * *

(b) No application form need be used. Petitioner shall file its entire argument with the petition, with the fee in the amount set forth in 49 CFR 1002.2(f)(3). The petition shall be sent to the Office of the Secretary.

* * * * *

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

15. The authority citation for Part 1162 continues to read:

Authority: 49 U.S.C. 10.321, 10928; 5 U.S.C. 559.

16. In § 1162.2, paragraph (c) is revised to read as follows:

§ 1162.2 Filing of applications.

* * * * *

(c) *Filing fees.* A filing fee in the amount set forth in 49 CFR 1002.2(f)(8) shall accompany each temporary authority application. The filing fee for ETA applications is set forth in 49 CFR 1002.2(F)(9). If applicant seeks any extension of the ETA, a filing fee in the amount set forth in 49 CFR 1002.2(f)(10) is required.

* * * * *

§ 1162.2 [Amended]

17. In § 1162.2 paragraph (e)(4)(ii), the first sentence of that paragraph is revised to read: "Any request for extension of ETA, not conforming to the rules in paragraph (e)(4)(i) of this section shall be made by filing an original and two (2) copies of form OCCA–19 and shall be accompanied by the fee set forth in 49 CFR 1002.2(f)(10).". The rest of the text of the paragraph remains unchanged.

PART 1169—RULES GOVERNING DISCONTINUING BUS TRANSPORTATION IN ONE STATE

18. The authority citation for Part 1169 continues to read:

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.3 [Amended]

19. In § 1169.3, the last sentence of the section is revised to read "The filing fee is set forth in 49 CFR 1002.2(f)(67).".

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

20. The authority citation for Part 1171 continues to read:

Authority: 49 U.S.C. 10922 and 10530; 5 U.S.C. 553.

21. In § 1171.5, paragraph (a) is revised to read as follows:

§ 1171.5 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the filing fee set forth in 49 CFR 1002.2(f)(1). A check or money order for that amount payable to the Interstate Commerce Commission in United States dollars must be submitted.

* * * * *

PART 1177—RECORDATION OF DOCUMENTS

22. The authority citation for Part 1177 continues to read:

Authority: 49 U.S.C. 10321 and 11303; 5 U.S.C. 559.

23. In § 1177.3, paragraph (c) is revised to read:

§ 1177.3 Requirements for submission.

* * * * *

(c) Be accompanied by the fee set forth in 49 CFR 1002.2(f)(84). However, assignments which are executed prior to the filing of the primary document and which are submitted concurrently will be treated along with the primary document as one for fee purposes and will be assessed only one fee. A lease and agreement (Philadelphia Plan) shall be similarly treated.

* * * * *

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

24. The authority citation for Part 1180 continues to read:

Authority: 49 U.S.C. 10321, 10505, 10903–10906, 11341, 11343–11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

25. In § 1180.4, paragraph (c)(1) is revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(c) * * *

(1) The fee to file a primary application with the Commission under these procedures is set forth at 49 CFR 1002.2(f) (46) through (49). There is no filing fee for a directly related application filed by a party that filed the primary application. The fee for a directly related or responsive application filed by another party is set forth in 49 CFR 1002.2(f) (46) through (49). For finance-related exemption filed by a party, the fee is set forth in 49 CFR 1002.2(f) (46) through (49).

* * * * *

26. In § 1180.41, paragraph (d) is revised to read as follows:

§ 1180.41 Submission and contents of offer.

* * * * *

(d) Applications shall be accompanied by a filing fee in the amount set forth in 49 CFR 1002.2(f)(56).

* * * * *

PART 1182—MOTOR CARRIER OF PASSENGERS APPLICATIONS TO CONSOLIDATE, MERGE OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343–11344

27. The authority citation for Part 1182 continues to read:

Authority: 49 U.S.C. 10321, 11343, 11344 and 11345; 5 U.S.C. 559.

§ 1182.1 [Amended]

28. In § 1182.1 paragraph (b), the third sentence beginning with the words "The filing fee" and ending with the words "Interstate Commerce Commission" is removed and the following sentence substituted in its place "The filing fee set forth at 49 CFR 1002.2(f)(21) must be paid at the time and place of application with a check or money order made payable to the Interstate Commerce Commission."

29. In § 1182.5, paragraph (c)(1) is revised to read as follows:

§ 1182.5 Processing temporary authority applications filed under 49 U.S.C. 11349 corresponding to applications filed under 49 U.S.C. 11343–11344 or 10926.

* * * * *

(c) *Starting the application process.* (1) Persons seeking temporary authority under this section shall properly complete application form OP–F–46. The application fee is set forth in 49 CFR 1002.2(f)(46).

* * * * *

[FR Doc. 87–28091 Filed 12–7–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 61225–7052]

Groundfish of the Bering Sea and Aleutian Islands Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments; correction.

SUMMARY: This document removes a coordinate that was inadvertently published in two places in the notice to close the Bering Sea area to fishing for sablefish and "other rockfish" that was published November 20, 1987 (52 FR 44597).

DATES: The closure is effective November 16, 1987, until December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist), 907–586–7230.

In rule document 87–26811 beginning on page 44597 in the issue of November 20, 1987, make the following corrections:

1. On page 44597, under the "**SUMMARY**" heading, column 3, line 10 from the top of the page, remove "south of 55° north latitude and".

2. On page 44598, under the "Notice of Closure" heading, column 3, beginning on line 24 from the bottom of the page, remove the same coordinate, "south of 55 degrees north latitude and".

Dated: December 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–28087 Filed 12–7–87; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 650

[Docket No. 70618-7241]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the regulations implementing the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) by revising the expiration date of fishing permits issued for this fishery. The intended effect is to provide consistency with annual permitting procedures recently adopted in the Northeast Region, NMFS.

EFFECTIVE DATE: Midnight on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride (Resource Policy Analyst), 617-281-3600, ext. 331.

SUPPLEMENTARY INFORMATION: The FMP was developed by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. A complete discussion on the history of this FMP can be found in the preamble of the proposed rule to implement this regulatory amendment (52 FR 25041, July 2, 1987) and is not repeated here.

All final regulations implementing management programs for the various fisheries under the management jurisdiction of the Northeast Region, NMFS, contain a fishing permit requirement. In 1987, the Region began to implement a system of renewing fishing permits annually. Annual permits provide a more accurate accounting of fishery participants and assist in monitoring the effectiveness of an FMP.

Language contained in the FMP only specifies that a permit is required to fish for Atlantic sea scallops; it is silent regarding the expiration date of such permit. The frequency of issuing fishing permits is left to the administrative discretion of NOAA. NOAA has determined that an annual permit requirement for the Atlantic sea scallop fishery is a reasonable measure to implement the approved FMP.

The public was invited to comment on the proposed rule until August 3, 1987. No written comments were received.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary and appropriate for the conservation and management of the sea scallop resource and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

This action is categorically excluded, by NOAA Directive 02-10, from the requirement to prepare an environmental assessment because it makes no significant change in the impacts identified and analyzed relative to the regulations implementing the FMP.

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The current regulatory measures of the FMP and their impacts are not changed by this action.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because minimal time is required for annual renewal of a permit. As a result, a regulatory flexibility analysis was not prepared. The Assistant Administrator for Fisheries, NOAA, has determined that this rule does not diectly affect the coastal zone of any State with an approved coastal zone management plan.

Information collection required for the vessel permit application has been approved by the Office of Management and Budget, under OMB Control Number 0648-0097, in accordance with the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: December 3, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 650 is amended as follows:

PART 650—[AMENDED]

1. The authority citation for 50 CFR Part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 650.4, paragraph (d) is revised to read as follows:

§ 650.4 Vessel permits.

* * * * *

(d) *Expiration.* A permit expires on December 31, or when the owner or name of the vessel changes.

* * * * *

FR Doc. 28128 Filed 12-3-87; 4:20 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 235
Tuesday, December 8, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Pickles

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and in response to a petition from the pickle industry, the Agricultural Marketing Service (AMS) reviewed and proposed to revise the United States Standards for Grades of Pickles. The proposed rule would change the U.S. grade standards for pickles by: (1) Removing minimum salt requirements; (2) establishing, under "Types of Pack," the "Refrigerated" type; (3) changing size designations; (4) reducing or eliminating the analytical requirements for acid, sugar, or salt for some types of pack; (5) eliminating the "length variation" in determining uniformity of size for whole style; (6) expanding the table for sizes of whole pickles in gallon containers to include other container sizes; (7) increasing the allowance for stems by changing the classifications; (8) simplifying the U.S. grade standard by condensing the various tables; (9) replacing dual grade nomenclature with single letter grade designations; and (10) incorporating minor editorial changes. The effect of this proposed rule would be to improve the standards and encourage uniformity in commercial practices which would facilitate the trading of pickles.

DATE: Comments must be received on or before February 8, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegatable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090–6456, Telephone (202) 447–6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices. In addition these standards are voluntary. A small entity may avoid incurring any additional economic impact by not applying for an inspection.

The United States Department of Agriculture (USDA) received a petition from Pickle Packers International, Incorporated (PPI), a trade association of the pickle industry, requesting changes in the United States Standards for Grades of Pickles. The PPI requested these changes to reflect procedural, processing, and marketing changes in the pickle industry during the last thirty years. The U.S. grade standards for pickles were last revised, except for minor changes, in 1954.

Consumer patterns have indicated preferences for foods containing lower levels of sodium. In response to these preferences, the pickle industry is producing lower-salt pickles. The proposed standards permit lower-salt pickles to receive a higher grade by eliminating the minimum salt requirements in the standards.

During the last decade, a new type of pickles known as "Refrigerated Type" has become popular among American consumers. The industry has requested a revision of the grade standards to include this type of pack.

PPI also requested the requirements in the grade standards for salt, acid, and Baumé (density) levels be changed to meet consumer preferences for a milder pickle, both in terms of salinity and acidity. The pickle industry has expressed concern about the public health aspects of sodium and has responded to consumer preference for reduced sodium levels in foods. In their view, there is no reason to require that pickles contain the current minimum of salt, and there is a need to allow for production to pickles containing as little sodium as is technologically feasible. The acid level should also be minimal but should be sufficient to achieve an equilibrated pH of 4.6 or below as required by the Food and Drug Administration (FDA) Good Manufacturing Practices for acidified foods.

Baumé levels should also be reduced since the three components (salt, acid, and sugar) are balanced by each manufacturer to maintain the desired characteristics for taste and flavor. These changes are reflected in Table V of the proposed standards.

PPI states that in most modern pickle processing plants, pickles are being sized solely by diameter rather than by length and diameter. Hand sorting pickles by length is not economically feasible and would add to processing costs. Data indicate that pickles are being marketed efficiently without hand sorting according to length and therefore "length" should not be part of the criteria for determining uniformity of size. PPI also requested that the table designating sizes for whole pickles in

gallon containers be expanded to include other common container sizes.

PPI also recommended that stems not be considered a defect in these U.S. grade standards, citing that stems are not listed as a defect in the USDA grade standards for fresh cucumbers. Presently, the PPI states, the industry makes no effort to remove stems from cucumbers except when preparing pickles for acceptance by the military or the school lunch program. PPI stated that one member, in reviewing complaint letters dating back 10 years, found no letters concerning attached stems affecting the quality of pickles. They also claim that, with the advent of mechanical harvesting, a restrictive requirement on stems is not economical and places an unreasonable burden on the processor. According to data reviewed by the USDA, consumer demand for pickles has been increasing over the last five years even though most processors are not attempting to remove stems.

In reviewing this request, the USDA has determined that stems are a defect and affect the appearance and eating quality when they exceed a specified length. For this reason, the USDA proposes that stems over 2.5 centimeters (.98 inch) in length be considered a minor defect. Stems that are 2.5 centimeters or less in length would be considered "insignificant" for the purposes of these grade standards.

The proposed rule follows a uniform format consistent with recent revisions of other U.S. grade standards. The proposed format is designed to provide industry personnel and agricultural commodity graders with simpler and more comprehensive standards. Definitions of terms and easy-to-read tables replace, where appropriate, some of the textual description in existing standards. These changes would promote better understanding and more uniform application of the standards. Modifications to appropriate sections of the current standards have been proposed to conform with these changes.

This proposal also replaces dual grade nomenclature with single letter designations. Under this proposal, "U.S. Grade A" (or "U.S. Fancy") and "U.S. Grade B" (or "U.S. Extra Standard") become "U.S. Grade A" and "U.S. Grade B" respectively. During the period from February 1983 to the present, the USDA evaluated the comments received from industry regarding the recommended changes and began drafting this proposed rule. After reviewing all the information, the USDA has determined that this proposed rule would facilitate trade between processors and buyers and improve the marketing of pickles.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624.

2. The subpart—United States Standards for Grades of Pickles, is revised to read as follows:

Subpart—United States Standards for Grades of Pickles

Sec.

Subpart—United States Standards For Grades of Pickles

§ 52.1681 Product description.

Pickles means the product prepared entirely or predominantly from cucumbers (Cucumis sativus L). Clean, sound ingredients are used that may or may not have been previously subjected to fermentation and curing in a salt brine. The prepared pickles are packed in an acid medium solution that may contain other vegetables, nutritive sweeteners, vinegar or other food grade acids, seasonings, flavorings, spices, and other ingredients permissible under the Federal Food, Drug, and Cosmetic Act. The product is packed in commercially suitable containers and may be heat treated, or otherwise processed, to assure preservation.

§ 52.1682 Styles of pickles.

(a) *Whole style* means the pickles are whole and are relatively uniform in diameter as indicated in Table II.

(b) *Whole, mixed sizes, style* means the pickles are whole pickles of mixed sizes.

(c) *Sliced lengthwise style* means the pickles are cut longitudinally into halves, quarters, or other triangular shapes (spears, strips, or fingers), or otherwise into units with parallel surfaces with or without ends removed.

(d) *Sliced crosswise, Crosscut, or Waffle cut style* means the pickles are cut into slices transversely to the longitudinal axis. The cut surfaces may have flat-parallel or corrugated-parallel surfaces.

(e) *Cut style* means the pickles are cut into chunks or pieces that are of various sizes and shapes.

(f) *Relish style* means finely cut or finely chopped pickles containing no less than 60 percent of cucumber ingredient and may contain other vegetable ingredients (cauliflower, onions, pepper, tomatoes, cabbage, olives, mustard or any other suitable vegetable).

§ 52.1683 Types of pack.

(a) *Cured type.* The pickles are cured by natural fermentation in a brine solution that may or may not contain salt (NaCl) and may contain the dill herb or extracts thereof. The pickle ingredient may be partially desalted and then processed or preserved in an equilibrated acidic solution (acetic, lactic, or other suitable food grade acid) with other ingredients (spices, flavorings, firming and preserving agents) that constitute the characteristics of the particular type of pickle. The characteristics of the various types of cured pickles are as follows:

(1) *Dill pickles* (natural or genuine) are cucumbers that are cured in a brine solution with dill herb and other flavoring agents.

(2) *Dill pickles* (processed) are brine-cured pickles that have undergone a freshening process and are packed in an acidic solution with dill flavoring and other flavoring agents.

(3) *Sour pickles* are cured pickles that are packed in an acidic solution with or without spices.

(4) *Sweet pickles and mild sweet pickles* are cured pickles that are packed in an acidic solution with suitable nutritive sweetening ingredients(s).

(5) *Sour mixed pickles* are cured pickles that are packed in an acidic solution. The pickles may be of any style or combination of styles other than relish and contains other vegetable ingredients as outlined in Table I or any other suitable vegetable.

(6) *Sweet mixed pickles and mild sweet mixed pickles* are cured pickles that are packed in an acidic solution with suitable nutritive sweetening ingredients(s). The pickles may be of any style or combination of styles other than relish and may contain other

vegetable ingredients as outlined in Table I or any other suitable vegetable.

(7) *Sour mustard pickles or sour chow chow pickles* are cured pickles of the same styles and ingredients as sour mixed pickles except the pickles are packed in a prepared mustard sauce of proper consistency with or without spices and flavorings.

(8) *Sweet mustard pickles or sweet chow chow pickles* are cured pickles of the same styles and ingredients as sweet mixed pickles except the pickles are packed in a sweetened, prepared mustard sauce of proper consistency with or without spices and flavorings.

(9) *Sour pickle relish* consists of finely cut or chopped cured pickles that are packed in an acidic solution. Sour pickle relish may contain other chopped or finely cut vegetable ingredients as listed in Table I, and may contain a stablizer such as a starch or gum.

(10) *Sweet pickle relish and mild sweet pickle relish* are finely cut or chopped cured pickles that are packed in an acidic solution with a suitable nutritive sweentening ingredient(s). Sweet pickle relish may contain other chopped or finely cut vegetable ingredients as listed in Table I and may contain a stablizer such as a starch or gum.

(11) *Hamburger relish* consists of relish style pickles and other chopped or finely cut vegetable ingredients as listed in Table I with tomato product added.

(12) *Mustard relish* consists of sweet pickle relish with mustard and other chopped or finely cut vegetable ingredients as listed in Table I.

(13) *Dill relish* consists of relish style pickles containing dill flavoring and other chopped or finely cut vegetable ingredients as listed in Table I.

(b) *Fresh-pack type.* The pickles are prepared from uncured, unfermented cucumbers and are packed in an acidic solution (acetic, lactic, or other suitable food grade acid) with other ingredients to produce the characteristics of the particular type of pack. The pickles are sufficiently processed by heat to assure preservation of the product in hermetically sealed containers. The distinguishing characteristics of the various types of fresh-pack pickles are as follows:

(1) *Fresh-pack dill pickles* are pickles that are packed in an acidic solution with dill favoring.

(2) *Fresh-pack sweetened dill pickles* are pickles that are packed in an acidic solution with nutritive sweetening ingredient(s) and dill flavoring.

(3) *Fresh-pack sweetened dill relish* consists of finely cut or chopped pickles packed in an acidic solution with suitable nutritive sweetening ingredient(s) and dill flavoring. The relish may contain other finely cut or chopped vegetable ingredients as listed in Table I.

(4) *Fresh-pack sweet pickles and fresh-pack mild sweet pickles* are pickles that are packed in an acidic solution with nutritive sweetening ingredient(s).

(5) *Fresh-pack sweet pickle relish and fresh-pack mild sweet pickle relish* consists of finely cut or chopped pickles that are packed in an acidic solution with suitable nutritive sweetening ingredient(s). The relish may contain other finely cut or chopped vegetable ingredients as listed in Table I.

(6) *Fresh-pack hamburger relish* consists of relish style pickles and other chopped or finely cut vegetable ingredients as listed in Table I with tomato product added.

(7) *Fresh-pack mustard relish* consists of sweet pickle relish with mustard and other chopped or finely cut vegetable ingredients as listed in Table I.

(8) *Fresh-pack dill relish* consists of relish style pickles containing dill flavoring and other chopped or finely cut vegetale ingredients as listed in Table I.

(9) *Fresh-pack dietetic pickles* are pickles that are packed with or without the addition of sweetening ingredient(s), salt (NaCl), or other suitable ingredient(s) as declared and permitted under the Federal Food, Drug, and Cosmetic Act for foods purporting to be for special dietary uses.

(c) *Refrigerated type.* The pickles are prepared from fresh cucumbers and are packed in an acidified brine (acetic, lactic, or other suitable food grade acid) with other ingredients to produce the fresh crisp characteristic of refrigerated type pack. The pickles are preserved by acidification to a pH of 4.6 or below. They are stored, distributed, and displayed under refrigeration and may or may not contain one or more chemical preservatives. The various types of refrigerated pickles are the same as the types listed for fresh-pack type in paragraph (b) of this section with respect to ingredients except that they conform to the requirements for refrigerated type.

TABLE I.—PROPORTIONS OF PICKLE INGREDIENTS IN CERTAIN TYPES AND STYLES

Pickle ingredients and style	Cured; fresh-pack; and refrigerated types	
	Sour mixed; sweet mixed; and mild sweet mixed; sour mustard or sour chow chow; sweet mustard or sweet chow chow	Sour pickle relish; sweet pickle relish; dill relish; hamburger relish; mustard relish
	Percent by weight of drained weight of product	
Cucumbers—any style other than relish.	60% to 80%.	
Cucumbers—chopped or finely cut.	.....	60% to 100%.
Cauliflower—pieces	10% to 30%.	
Cauliflower—chopped or finely cut.	.....	30% maximum (Optional).
Onions—whole (maximum diameter of 1¼ inch) or sliced or cut.	5% to 12%	
Onions—chopped or finely cut	.....	12% maximum (Optional).
Green tomatoes—whole or pieces.	(Optional) 10% maximum.	
Green tomatoes—chopped or finely cut.	.....	10% maximum (Optional).
Red, green, or yellow peppers, or pimientos—cut, finely cut, or pieces.	Optional	Optional.
Celery	Optional	
Cabbage	Optional	Optional.
Olives	Optional	Optional.
Tomato Paste	.....	Required in hamburger relish.
Mustard or prepared mustard	Required in chow chow and mustard pickles.	Required in mustard relish—optional in hamburger relish.

§ 52.1684 Sizes of whole pickles.

Sizes of whole pickles are based on the diameter and the relationship of diameter to the count per gallon. Size designations, applicable counts, and diameters are outlined in Table II of this subpart. The diameter of a whole cucumber is the shortest diameter at the greatest circumference measured at right angles to the longitudinal axis of the cucumber.

TABLE II.—SIZES OF PROCESSED WHOLE PICKLES

Word designation	Diameter	Approximate counts in—				
		Glass			Metal	
		1 qt.	½ gal.	1 gal.	No. 10	No. 12 (1 gal)
Midget	19 mm (.75 in) or less	67 or more	135 or more	270 or more	202 or more	270 or more
Small Gherkin	Up to 2.4 cm (.94 in)	33-66	67-134	135-269	101-201	135-269
Large Gherkin	Up to 2.7 cm (1.06 in)	16-32	32-66	65-134	48-100	65-134
Small	Over 2.7 cm (1.06 in) but not over 3.5 cm (1.38 in)	10-15	20-31	40-64	30-47	40-64
Medium	Over 3.5 cm but not over 3.8 cm (1.50 in)	6-9	13-19	26-39	19-29	26-39
Large	Over 3.8 cm but not over 4.4 cm (1.73 in)	4-5	9-12	18-25	13-18	18-25
Extra Large	Over 4.4 cm (1.73 in)	2-3	6-8	12-17	9-12	12-17

§ 52.1685 Definitions of terms.

As used in these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *Analytical definitions* refer to analytical laboratory requirements.

(1) *Acid* means total acidity of a safe and suitable organic acid(s) calculated as acetic acid in accordance with the Official Methods of Analysis of the Association of Official Analytical Chemists.

(2) *Brix value (Brix)* means the percent sugar, by weight, corrected to 20°C. (68°F.), as determined with a Brix hydrometer or other instrument that gives equivalent results.

(3) *Degrees Baumé* means the density of the packing medium determined with a Baume' hydrometer (modulus 145) corrected to 20°C. (68°F.).

(4) *Equalization* means the natural (osmotic) or simulated blending between the soluble solids of the pickle ingredient and the packing medium.

(i) *Natural equalization* means equalization brought about after a period of time has elapsed after processing as follows:

(A) Sweetened pickles are considered to be equalized 15 days or more after processing. If the pickles have been sweetened in a tank prior to packing, the pickles will be considered equalized 15 days after the sweetening process began.

(B) Sour and dill pickles are considered to be equalized 10 days or more after processing.

(ii) *Simulated equalization* means a method of simulating equalization by comminuting the finished product in a mechanical blender, filtering the suspended material from the comminuted mixture and making the required tests on the filtrate.

(5) *Total chlorides* or *salt* means the salt content expressed as grams NaCl (sodium chloride) per 100 milliliters packing medium; except that total chlorides in mustard pickles and chow chow is determined and expressed in grams NaCl per 100 grams of product.

(b) *Blemished* means any unit that is affected by discoloration, pathological injury, insect injury, or similar causes to the extent that the appearance or edibility of the product is adversely affected:

(1) *Slightly*—those blemishes which detract only slightly from the appearance of the unit;

(2) *Seriously*—those blemishes which strongly detract from the appearance or edibility of the unit.

(c) *Color*—(1) *Good color in cured type* means the typical skin color of the pickles ranges from a translucent light green to dark green and is practically free from bleached areas. Not more than 10 percent, by weight, of the pickles may vary markedly from such typical color. In mixed pickles, chow chow pickles, and pickle relish, all of the ingredients possess a practically uniform color typical for the respective ingredient. The pickles and other vegetable ingredients shall be free of off-colors.

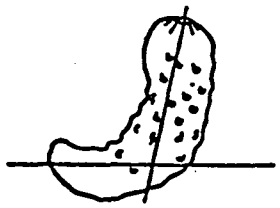
(2) *Good color in fresh-pack and refrigerated types* means the typical skin color of the pickles ranges from an opaque yellow-green to green. Not more than 15 percent, by weight, of the pickles may vary markedly from such typical color. In pickle relish, all of the ingredients possess a good uniform color typical for the respective ingredient. The pickles and other vegetable ingredients shall be free of off-colors.

(3) *Reasonably good color in cured type* means the typical skin color of the pickles ranges from light green to dark green and is reasonably free from bleached areas. Not more than 25 percent, by weight, of the pickles may vary markedly from such typical color. In mixed pickles, chow chow pickles, and pickle relish, all of the ingredients possess a reasonably uniform color typical for the respective ingredient. The pickles and other vegetable ingredients shall be free of off colors.

(4) *Reasonably good color in fresh-pack and refrigerated types,* means the typical skin color of the pickles ranges from light yellow-green to green. Not more than 30 percent, by weight, of the pickles may vary markedly from such typical color. In pickle relish, all of the ingredients possess a good, fairly uniform color typical for the respective ingredient. The pickles and other vegetable ingredients shall be free of off-colors.

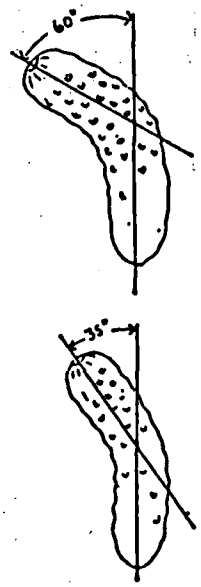
(5) *Poor color in all types of pickles* means the pickles fail to meet the requirements for good or reasonably good color for the respective type.

(d) *Crooked pickles* mean whole pickles that are curved at an angle greater than 60 degrees as illustrated by the following:



Also see the definition of misshapen.

(e) *Curved pickles* mean whole pickles that are curved at an angle of 35 to 60 degrees when measured as illustrated by the following:



(f) *Diameter* in whole style means the shortest diameter measured transversely to the longitudinal axis at the greatest circumference of the pickle. Diameter in cross-cut style is the shortest diameter of the largest cut surface.

(g) *Defect* means an imperfection such as curved, misshapen, mechanically damaged, discolored, and other imperfection that affects the appearance or edibility of the product.

(h) *End Cut* means a pickle unit intended for crosscut (sliced crosswise) style that has only one cut surface.

(i) *Extraneous Vegetable Material* (EVM) means any harmless vegetable material, other than stems, that is not normally part of the pickle ingredient. EVM such as leaves or other vegetable material not associated with proper pickle preparation or packaging is considered a defect if it affects the appearance or edibility of the product either:

(1) *Slightly*—Practically free of EVM and does not more than slightly affect the appearance or edibility; or

(2) *Materially*—Reasonably free of EVM and does not more than materially affect the appearance or edibility.

(j) *Flavor and odor*—(1) *Good flavor and odor* means characteristic flavor (e.g. characteristic dill flavor or the like) typical of properly processed pickles, for the type, that is free from objectionable flavor and odor of any kind.

(2) *Reasonably good flavor and odor* means flavor that may be lacking in characteristic flavor for the type but is free from objectionable flavor and odor.

(3) *Poor flavor and odor* means flavor that fails to meet the requirements for reasonably good flavor.

(k) *Length* in sliced lengthwise style means the longest straight measurement at the approximate longitudinal axis.

(l) *Mechanical damage* refers to crushed or broken units that affect the appearance of the units. In relish, mechanical damage refers to units which are poorly cut and have a ragged or torn appearance.

(m) *Misshapen pickles* mean whole pickles that are crooked or otherwise deformed (such as nubbins). Also see the definition for crooked pickles.

(n) *Nubbin* is a misshapen pickel that is not cylindrical in form, is short and stubby, or is not well developed.

(o) *Texture* means the firmness, crispness, and condition of the pickles and any other vegetable ingredient(s) that may be present. The following terms also relate to texture:

(1) *Hollow centers* in whole style, means the pickles, when cut transversely to the longitudinal axis, are missing ⅓ or more of the seed cavity.

(2) *Soft, shriveled, and slippery units* refers to pickles that are wrinkled, not crisp, slick, flabby, or lack firmness.

(3) *Good texture* means the pickle units have been properly processed and possess a texture that is firm and crisp.

(4) *Reasonably good texture* means the pickle units have been properly processed but lack some of the firmness and crispness that is characteristic for style and type of pack.

(5) *Poor texture* means the pickle units do not meet the requirements for reasonably good texture.

(p) *Uniformity of size* (relish style only)—(1) *Practically uniform in size* means the size of the units may vary moderately in size but not to the extent that the appearance or the eating quality is seriously affected.

(2) *Poor uniformity of size* means the units fail the requirements for practically uniform.

(q) *Unit* means one whole, half, slice, or piece of pickle as applicable for the style.

(r) *Units missing ⅓ or more of the seed cavity* in crosscut style means pickles that have lost a substantial portion of the seed cavity such as a crosscut unit missing ⅓ or more of the seed cavity portion.

§ 52.1686 Recommended fill of container.

The recommended fill of container is not a factor of quality for the purposes of these grades. Each container of pickles should be filled with pickle ingredient, as full as practicable, without impairment of quality. The product and packing medium occupy not less than 90 percent of the total capacity of the container.

§ 52.1687 Quantity of pickle ingredient.

(a) The recommendation minimum quantity of pickle ingredient is designated as the percentage of the declared volume of product in the container for all items except pickle relish. Minimum quantity of pickle relish is designated as a relationship of the drained weight of the pickle ingredient to the declared volume of the container. The minimum quantities recommended in Tables III and IV are not factors of quality for the purposes of these grades.

(b) The percent volume of pickle ingredient is determined for all styles, except relish, by one of the following methods in accordance with the procedures prescribed by the Processed Products Branch, Fruit and Vegetable Division:

(1) Direct displacement (overflow-can method);

(2) Displacement in a graduated cylinder;

(3) Measurement of pickle liquid;

(4) Any other method that gives equivalent results and is approved by the Processed Products Branch, Fruit and Vegetable Division.

(c) Drained weight/volume. The percentage weight/volume (w/v) of relish shown in Table III, is determined as follows. The drained weight of pickle relish of all types is determined by emptying the contents of the container upon a U.S. Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937 inch ±3 percent, square openings) so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for 2 minutes. The drained weight is the weight of the sieve and the pickles less the weight of the dry sieve. A sieve 8 inch in diameter is used for 1 quart and smaller size containers and a sieve 12 inches in diameter is used for containers larger than 1 quart in size.

TABLE III.—RECOMMENDED PICKLE INGREDIENT; ALL STYLES EXCEPT RELISH

Type of Pack	Minimum fill (Volume)
Cured	55 percent.
Fresh-Pack	57 percent.
Refrigerated	57 percent.

TABLE IV.—RECOMMENDED DRAINED WEIGHT BY VOLUME; RELISH

Type of Pack	Minimum fill (Weight/ Volume)
Cured:	
Sweet	92 percent.
Other than sweet	88 percent.
Fresh-pack:	
Sweet	85 percent.
Other than sweet	80 percent.

§ 52.1688 Sample unit size.

For all styles of pickles and types of pack, the sample unit used in analyzing the quality factors is the entire contents of the container unless otherwise specified in 7 CFR 52.1 through 52.83.

§ 52.1689 Grades.

(a) *U.S. Grade A* is the quality of pickles that meets the applicable requirements of Table V and Table VI, VII, VIII, IX, X, or XI and scores not less than 90 points.

(b) *U.S. Grade B* is the quality of pickles that meets the applicable requirements of Table V and Table VI, VII, VIII, IX, X, or XI and scores not less than 80 points.

(c) *Substandard* is the quality of pickles that fails the requirements of U.S. Grade B.

§ 52.1690 Factors of quality.

The grade of pickles is based on the following quality factors:

(a) Analytical requirements in Table V;

(b) Flavor and odor;

(c) Color;

(d) Uniformity of size;

(e) Defects; and

(f) Texture.

§ 52.1691 Requirements for grades.

TABLE V.—ANALYTICAL REQUIREMENTS CURED TYPE, ALL STYLES [1]

	Total acidity expressed as acetic acid g/100 ml, unless otherwise indicated (maximum)	Total chlorides expressed as NaCl grams/100 ml, unless otherwise indicated (maximum)	Degrees Brix (minimum)	Degrees Baume' (minimum)
Dills (natural, genuine, or processed)	1.1	5.0	.....	.....
Sour, sour mixed, dill pickle relish, sour relish	2.7	5.0	.....	.....
Sweet whole, sweet mixed, and sweet relish	2.7	3.0	27.0	15.0
Mild sweet, mild sweet mixed, mild sweet relish	.....	.....	20.0	12.0
Sour mustard or sour chow chow	[2]2.7	[2]3.0	.....	.....
Sweet mustard or sweet chow chow	[2]2.7	[2]3.0	28.0	15.5

[1] All pickle products must have an equilibrated pH of 4.6 or below.
[2] Expressed as "grams/100 grams."

TABLE V.—(CONTINUED) ANALYTICAL REQUIREMENTS [1] FRESH PACK AND REFRIGERATED TYPES, ALL STYLES

	Total acidity expressed as acetic acid g/100 ml [maximum]	Total chlorides expressed as NaCl grams/ 100ml, unless otherwise indicated [maximum]
Dills	1.1	4.25
Sweetened dills	1.1	4.25
Sweetened dills relish	1.1	4.25
Sweet and mild sweet relish	1.65	2.75
Sweet and mild sweet pickles	1.65	2.75
Dietetic	.....	.....

[1] All pickle products must have an equilibrated pH of 4.6 or below.

TABLE VI.—Quality Requirements Whole Style

	Grade A		Grade B	
	Maximum (by count)	Score	Maximum (by count)	Score
Flavor & Odor	Good	.....	Reasonably Good [1]	.....
Color	Good	18-20	Reasonably Good [1]	16-17
Uniformity of Size [2]	.....	18-20	.....	16-17

TABLE VI.—Quality Requirements Whole Style—Continued

	Grade A		Grade B	
	Maximum (by count)	Score	Maximum (by count)	Score
Diameter variation:				
Midget & Gherkin [over 8 mm (.31 in)]	10%		20%	
Small & Medium [over 10 mm (.39 in)]	10%		20%	
Large & Extra Large [over 12 mm (.47 in)]	10%		20%	
Defects	Practically Free	27-30	Reasonably Free [1]	24-26
Blemished (Slightly & Seriously)	15%		25%	
Blemished (Seriously)	5%		10%	
Curved pickles	10%		20%	
Misshapen	5%		15%	
Mechanical damage	10%		15%	
Attached stems [over 2.5 cm (.98 in)]	10%		20%	
EVM	Practically Free		Reasonably Free [1]	
Texture	Good	27-30	Reasonably Good [1]	24-26
Soft, Shriveled, & slippery units	5%		10%	
Hollow centers	15%		25%	
Total Score (minimum)		90 points		80 points

[1] Cannot be graded above U.S. Grade B, regardless of the total score.
[2] Pickles that are Substandard for uniformity of size cannot be graded above U.S. Grade B, regardless of the total score.

TABLE VII.—Quality Requirements, Whole Style, Mixed Sizes

	Grade A		Grade B	
	Maximum (by count)	Score	Maximum (by count)	Score
Flavor and odor	Good		Reasonably good [1]	
Color	Good	18-20	Reasonably good [1]	16-17
Defects	Practically free	27-30	Reasonably free [1]	24-26
Blemished (slightly and seriously)	15 percent		25 percent	
Blemished (seriously)	5 percent		10 percent	
Curved pickles	10 percent		20 percent	
Misshapen	5 percent		15 percent	
Mechanical damage	10 percent		15 percent	
Attached stems [over 2.5 cm (.98 in)]	10 percent		20 percent	
EVM	Practically free		Reasonably free [1]	
Texture	Good	27-30	Reasonably good [1]	24-26
Soft, shriveled, and slippery units	5 percent		10 percent	
Hollow centers	15 percent		25 percent	
Total score (minimum) [2]		90 points		80 points

[1] Cannot be graded above U.S. Grade B, regardless of the total score.
[2] Total score is adjusted by dividing the total score by .80 to allow for the absence of the quality factor of uniformity of size in whole mixed sizes style.

TABLE VIII.—Quality Requirements, Sliced Lengthwise

	Grade A		Grade B	
	Maximum (by count)	Score	Maximum (by count)	Score
Flavor and odor	Good		Reasonably good [1]	
Color	Good	18-20	Reasonably good [1]	16-17
Uniformity of size [2]		18-20		16-17
Length variation over 2.6 cm (1.02 in)	10 percent		20 percent	
Defects	Practically free	27-30	Reasonably free [1]	24-26
Blemished (slightly and seriously)	15 percent		25 percent	
Blemished (seriously)	5 percent		10 percent	
Mechanical damage	10 percent		15 percent	
Attached stems [over 2.5 cm (.98 in)]	10 percent		20 percent	
EVM	Practically free		Reasonably free [1]	
Texture	Good	27-30	Reasonably good [1]	24-26
Soft, shriveled, and slippery units	5 percent		10 percent	
Total score (minmum)		90 points		80 points

[1] Cannot be graded above U.S. Grade B, regardless of the total score.
[2] Pickles that are Substandard for uniformity of size cannot be graded above U.S. Grade B, regardless of the total score.

TABLE IX.—QUALITY REQUIREMENTS, SLICED CROSSWISE OR CROSSCUT STYLE

	Grade A		Grade B	
	Maximum (by count)	Score	Maximum (by count)	Score
Flavor Odor	Good		Reasonably good [1]	
Color	Good	18-20	Reasonably good [1]	16-17
Uniformity of Size [2]:		18-20		16-17
Diameter over 5.4 cm (2.13 in)	10 percent		20 percent	
Defects	Practically free	27-30	Reasonably free [1]	24-26
Blemished (slightly and seriously)	15 percent		25 percent	
Blemished (seriously)	5 percent		10 percent	
Mechanical damage:	15 percent		25 percent	
Broken pieces and end cuts	10 percent		15 percent	
Thickness over 10 mm (.38 in)	10 percent		15 percent	
Attached stems over 2.5 cm (.98 in)	10 percent		15percent	
Units missing ⅓ seed cavity	10 percent		15 percent	
EVM	Practically free		Reasonably free [1]	
Texture	Good	27-30	Reasonably good [1]	24-26
Soft, shriveled, and slippery units	5 percent		10 percent	
Large objectionable seeds, detached seeds, and tough skins	Practically free		Reasonably free [1]	
Total score (minimum)		90 points		80 points

[1] Cannot be graded above U.S. Grade B, regardless of the total score.
[2] Pickles that are Substandard for uniformity of size cannot be graded above U.S. Grade B, regardless of the total score.

TABLE X.—QUALITY REQUIREMENTS, CUT STYLE

Grade A	Grade B			
	Maximum (by count)	Score	Maximum (by count)	Score
Flavor and odor	Good		Reasonably good [1]	
Color	Good	18-20	Reasonably good [1]	16-17
Uniformity of Size [2]		18-20		16-17
Small pieces 5g. or less	5 percent		10 percent	
Defects	Practically free	27-30	Reasonably free [1]	24-26
Blemished (slightly and seriously)	15 percent		25 percent	
Blemished (seriously)	5 percent		10 percent	
Mechanical damage	10 percent		15 percent	
Attached stems over 2.5 cm (.98 in)	10 percent		15 percent	
EVM	Practically free		Reasonably free [1]	
Texture	Good	27-30	Reasonably good [1]	24-26
Soft, shriveled, and slippery units	5 percent		10 percent	
Large objectionable seeds, detached seeds, and tough skins	Practically free		Reasonably free [1]	
Total score (minimum)		90 points		80 points

[1] Cannot be graded above U.S. Grade B, regardless of the total score.
[2] Pickles that are Substandard for uniformity of size cannot be graded above U.S. Grade B, regardless of the total score.

TABLE XI.—QUALITY REQUIREMENTS, RELISH

	Grade A		Grade B	
	Maximum (by weight)	Score	Maximum (by weight)	Score
Flavor and odor	Good		Reasonably good [1]	
Color	Good	18-20	Reasonably Good [1]	16-17
Uniformity of Size [2]		18-20		16-17
Overall appearance	Good		Reasonably Good [1]	
Defects	Practically free	27-30	Reasonably free [1]	24-26
Blemished (slightly and seriously)	15 percent		25 percent	
Blemished (seriously)	5 percent		10 percent	
Poorly cut	10 percent		15 percent	
Loose stems over 3 mm (.12 in)	10 percent		15 percent	
EVM	Practically free		Reasonably Free [1]	

TABLE XI.—QUALITY REQUIREMENTS, RELISH—Continued

	Grade A		Grade B	
	Maximum (by weight)	Score	Maximum (by weight)	Score
Texture	Good	27-30	Reasonably good [1]	24-26
Soft, shriveled, & slippery units	5 percent		10 percent	
Large objectionable seeds, detached seeds, & tough skins	Practically free		Reasonably free [1]	
Total score (minimum)		90 points		80 points

[1] Cannot be graded above U.S. Grade B, regardless of the total score.
[2] Pickles that are Substandard for uniformity of size cannot be graded above U.S. Grade B, regardless of the total score.

§ 52.1692 Determining the grade of a lot.

The grade of a lot of pickles covered by these standards is determined by the procedures found in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, and Related Products" (7 CFR 52.1 through 52.83).

Done at Washington, DC, on: December 4, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-28088 Filed 12-7-87; 8:45 am]

BILLING CODE 3410-02-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Clarification of Administrative Error

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The law provides that the Veterans Administration (VA) will not create an overpayment against the account of a veteran or eligible person if the overpayment is created as a result of an erroneous award of benefits based solely upon administrative error or error in judgment. Increasingly, users of the regulations have relieved veterans of overpayments when the overpayments resulted from administrative errors by third parties such as school officials rather than from such errors in the award of benefits by the VA. This is contrary to the way in which the law has been implemented for several decades. Accordingly, the regulation which implements this provision of law for the education programs which the VA administers is amended to make it clear that the law applies only to administrative error by the VA.

DATES: Comments must be received on or before January 7, 1988. Comments will be available for public inspection until January 21, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until January 21, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The VA is proposing an amendment to 38 CFR 21.4135(p) to make clear that when an overpayment of educational assistance allowance is due solely to an administrative error or error in judgment on the part of the VA, the veteran's or eligible person's award of educational assistance allowance will be terminated as of the date of last payment. The VA will use the facts found to apply the other paragraphs in § 21.4135 to overpayments of educational assistance allowance due to administrative error on the part of schools or other third parties.

The VA has determined that this proposed amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the intitial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the proposed amended regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed amended regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 16, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, Vocational Rehabilitation and Education, § 21.4135 is proposed to be amended by revising paragraph (p)(2) and adding an authority citation to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(p) * * *

(2) Date of last payment on an erroneous award based solely on administative error by the VA or error in judgment by the VA.

(Authority: 38 U.S.C. 3012(b)(10) and 3013)

* * * * *

[FR Doc. 87-28089 Filed 12-7-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3299-2]

Approval and Promulgation of Implementation Plans Approval of a Revision to the Pennsylvania SIP

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This Notice proposes approval of a revision to the Pennsylvania State Implementation Plan (SIP). Pennsylvania has revised its regulations to conform to EPA's stack height regulation. EPA promulgated the revised stack height rule on July 8, 1985 (50 FR 27892) and required the states to revise their SIPs by April 8, 1986 to conform to the rule. Pennsylvania submitted its proposed revision on April 7, 1986.

DATE: Comments must be received on or before January 7, 1988.

ADDRESSES: Comments may be mailed to Joseph Kunz, Chief, PA/WV Section at the EPA, Region III address given below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM11);
Pennsylvania Department of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120, Attn: Gary Triplett.

FOR FURTHER INFORMATION CONTACT: Denis Lohman (3AM11), PA/WV Section at the EPA, Region III address given above or telephone (215) 597-8375.

SUPPLEMENTARY INFORMATION:

Background

Section 123 of the Clean Air Act requires EPA to promulgate rules to assure that the degree of emission limitation required for the control of any air pollutant under an applicable SIP is not affected by stack heights exceeding good engineering practice (GEP) height or by any other dispersion technique.

The EPA originally promulgated regulations to implement section 123 requrements on February 8, 1982 (47 FR 5864). Those regulations were challenged by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., the Commonwealth of Pennsylvania, and on October 11, 1983, the U.S. Court of Appeals for the D.C. Circuit remanded portions of the regulations for reconsideration, reversing two portions and upholding certain others [*Sierra Club* v. *EPA*, 719 F. 2d 436 (1983)]. The EPA proposed revisions to the stack height rules on November 9, 1984 (49 FR 44878). The EPA promulgated final revisions to the rules on July 8, 1985 (50 FR 27892). The final rules contain changes made in response to comments submitted on the proposal.

Pursuant to section 406(d)(2) of the Clean Air Act, the July 8, 1985 Notice required all states to review and revise, as necessary, their SIP's to include provisions that limit stack height credits and dispersion techniques in conformance with the revised rule. Pennsylvania submitted its proposed revision on April 7, 1986. Pennsylvania's revision adopts EPA's new definitions of "dispersion technique" and "good engineering practice stack height" by incorporating the provisions by referencing the appropriate sction of the Code of Federal Regulations (40 CFR 51.100 [formerly § 51.1] (gg), (hh), (ii), (jj), and (kk) with the exceptions permitted by 40 CFR 51.118(b)). The revision does not include the definitions of "Emission limitation" and "Stack" which were added to Part 51 with the Stack Height Regulations promulgated on February 8, 1982 (47 FR 5868).

The revision [formerly § 51.12(k)] also adopts EPA's revised § 51.118(a) and (b) relating to stack height credits for new or revised emission limitations. More detail on these sections may be found in the July 8, 1985 Notice and in the Code of Federal Regulations.

On March 11, 1986, Pennsylvania submitted a letter committing the Department of Environmental Resources to conduct new source review in accordance with the good engineering practice requirements of EPA. Pennsylvania's regulations in 25 PA Code Chapter 127 require, at § 127.12(4) and § 127.22(5), that new sources being revised for permits comply with all requirements promulgated by the Administrator of the United States Environmental Protection Agency pursuant to provisions of the Clean Air Act. EPA has agreed that the language of Chapter 127, along with the lettter of commitment, satisfies the requirements of 40 CFR Part 51, Subpart I [formerly § 51.18] for applying the stack height revision to new source review, including the definitions of emision limitation and stack which were not changed in the revised regulation. The requirements of § 127.12(4) and § 127.22(5) make those definitions applicable and should not result in enforcement problems.

The April 7, 1986 submittal also deletes outdated provisions of Chapter 141 of the Pennsylvania regulations pertaining to variances. Namely, §§ 141.2 thru 141.7, 141.11 thru 141.13, 141.21 thru 141.23, 141.31 thru 141.35, and 141.41 thru 141.44 have been deleted. These provisions date back to the basic 1972 SIP submittal which did not always provide specific schedules for compliance and allowed companies to apply for "variances" under which specific schedules were developed. These variance provisions are no longer necessary as each emission regulation now provides a final compliance date and other sections of the Pennsylvania regulations address the requirements and procedures for source-specific extensions. Therefore, EPA is proposing to approve deletion of these sections.

Proposed Action

EPA proposes to approve Pennsylvania's April 7, 1986 submittal, in its entirety, as a revision of the Pennsylvania State Implementation Plan. This action is being processed in parallel with Pennsylvania's procedures for adopting stack height regulations. The comments received as a result of the Pennsylvania public hearing will be considered in addition to comments solicited by this Notice.

Miscellaneous

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 CFR Part 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: September 24, 1986.

James M. Seif,

Regional Administrator.

Editorial note. This document was received at the Office of the Federal Register December 3, 1987.

[FR Doc. 87-28102 Filed 12-7-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 721

[OPTS-50564; FRL-3299-5]

1-Decanamine, N-Decyl-N-Methyl-N-Oxide; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance 1-decanamine, N-decyl-N-methyl-N-oxide [CASRN: 100545-50-4] which was the subject of premanufacture notice (PMN) P-86-566. The Agency believes that this substance may be hazardous to the environment and that the uses described in this proposed rule may result in significant environmental exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for a significant new use would be required to notify EPA at least 90 days before commencing that activity. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it occurs.

DATE: Written comments should be submitted by February 8, 1988.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50564. Nonconfidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE-G004 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit X of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assiostance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION: This notice announces a proposed significant new use rule for the chemical substance which was the subject of PMN P-86-566. The Agency believes that this substance may be hazardous to the environment and that the uses described in this proposed rule may result in significant environmental exposure.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed there in detail and persons should refer to that document for further information. EPA is proposing that these general provisions apply to this SNUR. On April 22, 1986, EPA proposed revisions to the general provisions (51 FR 15104), some of which would apply to this proposed SNUR.

III. Summary of This Proposed Rule

The chemical substance which is the subject of this proposed rule is identified as 1-decanamine, N-decyl-N-methyl-N-oxide [CASRN: 100545-50-4]. It was the subject of PMN P-86-566. EPA is proposing to designate the following as significant new uses of the substance: any use in laundry or dishwashing detergents.

IV. Background

On February 21, 1986, EPA received a PMN which the Agency designated as P-86-566. EPA announced receipt of the PMN in the **Federal Register** of March 7, 1986 (51 FR 8009). The notice submitter intends to manufacture the substance for use as an ingredient in hair conditioner formulations, fabric conditioner formulations, and hard-surface cleaning formulations, and as a brake fluid corrosion inhibitor.

The notice submitter claimed the following as confidential business information (CBI): production volume, process information, use concentration, and exposure and release estimates. Under section 14(a)(4) of TSCA, the Aency may disclose CBI when relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its chemical name and PMN number.

The Agency is concerned that P-86-566 may present risks to the environment. The Agency is specifically concerned that exposure to P-86-566 at surface water concentrations above 2 parts per billion ("ppb") might induce adverse effects in aquatic organisms in the environment. These conclusions are based primarily upon three submitted acute ecotoxicity studies on the PMN substance and upon structural analogy of the PMN substance to other amine oxide surfactants. The three acute studies on the PMN substance were conducted on algae, daphnids, and fish. The test results indicated algae as the most sensitive species with a 96-hour 50 percent effects concentration (EC_{50}) of 200 ppb. The Agency, therefore, has applied an uncertainty factor of 100 to the algal EC_{50} from the acute studies in

deriving an environmental concern level of 2 ppb for chronic toxicity.

Although the Agency identified potential adverse effects of P-86-566, no regulatory action was taken during the PMN review period. This was based upon the fact that the Agency does not expect the uses identified by the notice submitter in the PMN to result in surface water concentrations which exceed the abovementioned 2 ppb level of concern for aquatic toxicity. However, during use of P-86-566 in laundry or dishwashing detergents, which might result in greater and more frequent releases than the uses described in the PMN, the Agency believes that significant environmental exposures might occur.

When the notice submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture to EPA, the Agency will add the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in proposed § 721.780(a)(2) as significant new uses so the Agency can review those uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that the environment will not be exposed to levels of P-86-566 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposes to designate the significant new uses of P-86-566 as set forth in proposed § 721.780.

VI. Exemptions to Reporting Requirements

EPA has codified, in § 721.19, general exemption provisions covering SNUR reporting. On a case-by-case basis, the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

On April 22, 1986, EPA issued amendments to 40 CFR Part 720, the premanufacture notification rule (51 FR 15096), including revisions of §§ 720.36 and 720.78(b) which contain detailed rules for the section 5(h) (3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. Because §§ 720.36 and 720.78(b) were not in effect when EPA codified § 721.19, the Agency has relied on the definition of "small quantities solely for research and development in § 720.3(cc) and section 5(h) (3) of TSCA to determine whether activities by manufacturers, importers, and processors of substances identified in SNURs qualify under this exemption. On April 22, 1986, EPA proposed amendments to 40 CFR Part 721 which would redesignate § 721.19 as § 721.18 and which would contain a new § 721.19 establishing detailed rules for the section 5(h) (3) exemption for SNURs and which would ultimately apply to this SNUR. The proposed new § 721.19 is similar to the revised §§ 720.36 and 720.78(b). Until the SNUR amendments are promulgated, manufacturers, importers, and processors of chemical substances identified in SNURs may look to §§ 720.36 and 720.78(b) and the proposed new § 721.19 for guidance in complying with the section 5(h) (3) exemption.

Section § 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. The term "manufacture solely for export" is defined in § 720.3(s) of the PMN rule; an amendment clarifying this definition was issued on April 22, 1986 (51 FR 15096). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S. except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer of processor; and (3) distribution in commerce is limited to purposes of export or processing solely for export. If a person manufactured or processed the substance both for export and for use in the U.S., the manufacturing or processing would be for use in the U.S. regardless of whether any quantity of the substance were exported at the same time or at a later date.

VII. Applicability of Proposed Rule to Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter begins manufacture of the substance, the submitter will send EPA a Notice of Commencement of Manufacture and the substance will be added to the Inventory. The notice submitter indicated that it did not intend to undertake the activities designated in this proposal as signficant new uses, and EPA has no indication that the submitter will do so contrary to its original intent. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance identified in this SNUR is added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA believes that the intent of section 5(a) (1) (B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating a proposed significant new use before the rule became final. This would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of P-86-566 for a signficant new use between proposal and promulgation of this SNUR would have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA recognizes that this interpretation of TSCA may disrupt the commercial activities of persons who begin to manufacture, import, or process the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who manufacture,

import, or process for a proposed significant new use prior to promulgation of a final SNUR, has proposed a new § 721.18(h) in Subpart A of 40 CFR Part 721 (51 FR 15104) to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation).

VIII. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential environmental risks that may be posed by a significant new use of this substance, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the potential risks posed by this substance when utilized for an intended use. The Agency believes that the results of a daphnid chronic toxicity test and a fish early life stage toxicity test would adequately characterize possible chronic ecotoxicity effects of the substance. These studies may not be the only means of addressing the potential risks. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on environmental releases that will result from the significant new uses. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, or processors of this chemical substance. The Agency's complete economic anlysis is available in the public record for this rule (OPTS-50564). This economic analysis is summarized below.

The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing a SNUR are $10,504 to $20,488. While enforcement costs may also be incurred, the Agency cannot quantify them at this time.

Subsequent to promulgating the SNUR, the Agency believes that there would be three possible outcomes for companies that would manufacture, import, process, distribute in commerce, or dispose of the substance. The companies could: (1) Manufacture, import, process, distribute in commerce, use or dispose of the substance within the limits of this SNUR: (2) manufacture, import, process, distribute in commerce, or dispose of the substance under circumstances requiring the submission of a SNUR notice; or (3) not manufacture, import, process, distribute in commerce, use, or dispose of the substance. The costs of these outcomes are summarized below.

If a compnay decides to manufacture, import, process, distribute in commerce, use, or dispose of P-86-566 within the limits of this SNUR, it will not incur the cost of submitting a SNUR notice. No other direct costs would be incurred since the SNUR does not impose any such costs (e.g. protective equipment, toxicity testing).

If the company intends to produce the PMN substance not under the terms of the SNUR, it will incur the cost of filing a SNUR notice ($1,400-$8,000). The company may also incur up to a 3.2 percent reduction in profits due to delays in manufacture or processing, and the cost of regulatory follow-up, if any.

EPA recognizes that persons are not required to develop any particular test data before submitting a SNUR notice. However, the Agency believes that the results of a daphnid chronic toxicity test ($9,500) and a fish early life stage toxicity test ($18,800) could characterize possible chronic ecotoxicity effects of the substance.

If a company chooses to perform these tests, it would incur the cost of testing ($28,300), the cost of filing the SNUR notice, the delay costs, and the cost of regulatory follow-up, if any.

Some companies could find the cost of controlling releases of the PMN substance, associated with a "new" use, or potential testing costs too expensive to justify. Under this outcome a company would not incur any direct costs as a result of the SNUR. The company and society, however, could lose any potential benefits that would have been derived from the "new" use of the PMN substance.

The Agency has not quantified the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant environmental effects occur. The proposal and promulgation of the SNUR provide benefits to society by minimizing or eliminating potential environmental effects for this chemical substance.

X. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50564). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. This proposed rule.
4. The economic analysis of the proposed rule.
5. The toxicology support document.
6. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA believes that the cost would be low. EPA believes that, because of the nature of the proposed rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage innovation that has high potential value.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this proposed rule would not, if promulgated, have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, the Agency believes that the number of small businesses affected by this rule would not be substantial even if all the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0012 to this proposed rule. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: November 27, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.780 to read as follows:

§ 721.780 1-Decanamine, N-decyl-N-methyl-N-oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its chemical name and CAS number is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: 1-Decanamine, N-decyl-N-methyl-N-oxide [CASRN: 100545–50–4].

(2) The significant new uses are: use in laundry or dishwashing detergents.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 87–28104 Filed 12–7–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3450

[AA–660–07–4121–02]

Management of Existing Leases Amendment Concerning the Procedures for Readjustment of Lease Terms

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would eliminate the process in 43 CFR Part 3450 of the existing regulations for filing an objection to the lease terms and conditions mandated by law or required by existing regulations for a readjusted coal lease. While continuing the language in the existing regulations which provides a 30-day review period of a lease readjustment by the Attorney General of the United States, the proposed rulemaking also would make a technical amendment which would provide that the readjusted lease terms and conditions become effective on the anniversary date of the Federal coal lease. The proposed rulemaking would eliminate the existing provision that allows rentals and royalties set in the readjusted lease to accrue unpaid during the pendency of an appeal of the readjustment before the Office of Hearings and Appeals of the Department of the Interior and would require that the readjusted rates be paid during the pendency of any appeal.

DATE: Comments should be submitted by February 8, 1988. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer, (202) 343–7722, or Pamela J. Lewis, (202) 343–7722.

SUPPLEMENTARY INFORMATION: Section 6 of the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083 – 1092) amended section 7 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 207) to require that Federal coal leases be readjusted to a production royalty rate of not less than 12½ percent of the gross value of all coal mined. However, the Secretary of the Interior was given the discretion to set a lesser royalty rate 12½ percent for coal recovered by using underground methods. A production royalty of 8 percent of the gross value of coal mined using underground methods is currently provided for in 43 CFR Subparts 3451 and 3473.

Federal lessees have routinely objected to the readjusted lease terms and conditions, basing their objections on the view that the Office of the Solicitor, Department of the Interior, has misinterpreted the provisions of section 6 of the Federal Coal Leasing Amendments Act. The Office of the Solicitor has interpreted section 6 of the Act as requiring that the readjusted terms and conditions of all Federal coal leases issued prior to August 4, 1976, and subject to readjustment of their terms and conditions after that date, must comply with the requirements of the Federal Coal Leasing Amendments

Act (Solicitor's Opinion M-36939, 88 I.D. 1003(1981)).

A Federal lessee pursues an objection to the readjusted lease terms and conditions of a Federal coal lease by filing those objections with the Bureau of Land Management State Director that was responsible for issuing the readjustment decision. The objections are carefully reviewed and are either dismissed or affirmed, depending on the evidence presented on the issues raised in the objection. The objections made to readjusted lease terms and conditions required by either law or provisions of existing regulations are routinely dismissed by the Bureau.

The proposed rulemaking would eliminate the process under which a Federal coal lessee files objections to those readjusted terms and conditions that are mandated by either law or existing regulations. Readjusted terms and conditions become applicable to pre-Federal Coal Leasing Amendments Act Federal leases upon their first adjustment under the Act. Standard lease terms and conditions are not subject to objection by the lessee because they have already been the subject of public review and comment under the Administrative Procedures Act (40 U.S.C. 760 et seq.) (See the Final Federal Coal Lease Form, Part I, sections 1 and 2, and Part II, sections 1 through 14). Therefore, the change made by the proposed rulemaking would remove from the existing objection process those standard lease terms required by regulations implementing a statutory mandate that become part of a readjusted lease.

The elimination of the provisions allowing an objection to lease terms and conditions set by law or regulations for readjusted coal leases should result in cost savings by the Bureau of Land Management. It is estimated that the administrative costs incurred by the Bureau in processing objections to readjusted Federal coal leases will be decreased by approximately $80,000 each Fiscal Year.

The proposed rulemaking would remove the provision in the existing regulations that allows the accrual of rentals and royalties during the pendency of an appeal of a lease readjustment. This change is being proposed because of a determination by the Bureau of Land Management that there is no basis in law for allowing readjusted rentals and royalties to accrue during the pendency of an appeal. Therefore, it is appropriate that the United States be paid the readjusted rentals and royalties as soon as the readjustment becomes effective and this proposed rulemaking would require such payments.

This proposed rulemaking would not change the existing process for resolution of differences over discretionary terms and conditions. These issues will continue to be resolved through negotiations between Federal coal lessees and the Bureau of Land Management State offices responsible for the readjusted lease. If negotiations do not result in a satisfactory resolution of the issues in controversy, the Federal coal lessee will continue to have the right to appeal discretionary lease stipulations under 43 CFR Part 4.

The U.S. Court of Appeals for the Tenth Circuit has held that the mandatory terms and conditions established by section 6 of the Federal Coal Leasing Amendments Act of 1976 must be included in a coal lease at the time of readjustment ((*Wyoming Corp.* v. *Hodel* 816 F. 2d 496 (10th Cir. 1987); *Coastal States Energy Co.* v. *Hodel* 816 F. 2d 802 (10th Cir. 1987)). FMC Wyoming Corp. has not petitioned the U.S. Supreme Court to review the decision of the 10th Circuit Court of Appeals. There are several other lawsuits pending which also challenge lease readjustments. The outcome of these cases will not affect this proposed rulemaking.

Those lease terms and conditions which the court rule must be established on a case-by-case basis are subject to the objection process set out in the proposed rulemaking. Those terms and conditions which the courts rule are mandated by the law or which they rule are reasonable will be effective upon readjustment under the language of the proposed rulemaking.

The principal authors of this proposed rulemaking are Pamela J. Lewis and Allen B. Agnew, Division of Solid Mineral Operations, Bureau of Land Management, assisted by other Bureau field and Washington Office staff, the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 et seq.).

The economic impacts of this proposed rulemaking will not exceed the economic threshold of Executive Order 12291 and the rulemaking will impact all lessees equally, regardless of their size.

This rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3450

Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), it is proposed to amend Part 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3450—[AMENDED]

1. The authority citation for Part 3450 continues to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

2. Section 3451.2 (b), (c), and (e) are revised to read:

§ 3451.2 Notification of readjusted lease terms.

* * * * *

(b) The notice transmitting the readjusted lease terms and conditions to the lessee(s) of record shall constitute the final action of the Department of the Interior on all the provisions, except any special stipulations, contained in a readjusted coal lease. Procedures shall be provided in the notice to the lessee(s) for filing objections to terms and conditions not required by statute or regulation such as special stipulations. The effective date of the readjusted lease shall not be affected by the filing of an objection(s) to any special stipulations that might be contained in the readjusted lease.

(c) The readjusted lease terms and conditions shall become effective on the anniversary date of the readjusted lease

or 30 days after the authorized officer notifies the Attorney General of the United States of the proposed readjustment, whichever is later.

* * * * *

(e) All of the readjusted lease terms and conditions including, but not limited to, the reporting and payment of rental and royalty to the appropriate agency when due, shall be effective pending the outcome of an appeal of the readjusted lease.

J. Steven Griles,

Assistant Secretary of the Interior.

November 13, 1987.

[FR Doc. 87-28118 Filed 12-7-87; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 87-24]

Foreign-to-Foreign Agreements; Exemption

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the filing of agreements submitted to the Commission pursuant to section 5 of the Shipping Act of 1984. This proposed amendment of Part 572 would add a new exemption for certain foreign-to-foreign carrier agreement authority in contiguous trades. The proposed rule would exempt eligible agreements, that are filed with the Commission, from notice, waiting period, and information requirements of the Act and of this part. The purpose of the proposed exemption is to promote international comity, eliminate delay in agreement effectiveness, lessen costs to parties, and conserve Commission resources.

DATES: Comments (original and 15 copies) ae due on or before February 8, 1988.

ADDRESS: Send comments to: Joseph C. Polking, Secretary Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is proposing a rule which would exempt certain ocean common carrier agreements, involving foreign-to-foreign transportation movements, from certain statutory and regulatory requirements. A discussion of the jurisdictional basis and the regulatory purpose of this proposed exemption follows.

I. Jurisdiction Over Foreign-to-Foreign Agreements

The Shipping Act of 1984 ("the Act" or "the 1984 Act"), 46 U.S.C. app. 1701-1720, makes certain carrier agreements subject to the jurisdiction of the Federal Maritime Commission. In order for the Act to apply to a carrier agreement, two jurisdictional elements must be present. The first jurisdictional element is that the parties to the agreement must meet the statutory definition of an "ocean common carrier." Section 3(18) of the Act, 46 U.S.C. app. 1702(18), defines an "ocean common carrier" as follows:

> "Ocean common carrier" means a vessel-operating common carrier.

This definition on "ocean common carrier" is, in turn, expanded by the basic definition of a "common carrier" contained in section 3(6) of the Act, 46 U.S.C. app. 1702(6), which states in relevant part:

> "Common carrier" means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—
>
> (A) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and
>
> (B) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

The second jurisdictional element is that the subject matter of the agreement must include an activity described in section 4(a) of the Act, 46 U.S.C. app. 1703(a). Seven categories of agreements are listed in section 4(a). [1]

Section 5(a) of the Act, 46 U.S.C. app. 1704(a), requires that agreements covered by section 4 be filed with the Commission, and section 6 of the Act, 46 U.S.C. app. 1705, establishes a procedure for notice, review, and effectiveness of file agreements. An agreement that has been filed and become effective is exempt from the antitrust laws pursuant to section 7(a)(1) of the Act, 46 U.S.C. app. 1706(a)(1).

Foreign-to-foreign carrier agreements are those agreements by or among ocean common carriers that relate "to transportation to be performed within or between foreign countries." 46 U.S.C. app. 1704(a). These agreements are expressly excepted from the mandatory filing requirements of section 5(a) of the Act and have qualified immunity from the antitrust laws under section 7(a)(3) of the Act, 46 U.S.C. app. 1706(a)(3). Section 7(a)(3) states:

> The antitrust laws do not apply to—
>
> (3) Any agreement or activity that relates to transportation services within or between foreign countries, whether or not via the United States, *unless that agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States.*

(Emphasis added). It is important to note that the section 7(a)(3) antitrust immunity for foreign-to-foreign agreements is limited, and that it does not shield such agreements when they have a "direct, substantial, and reasonably foreseeable effect" on the commerce of the United States.

Congress may have intended, however, to permit a grant of antitrust immunity if exposure exists. This would allow ocean common carriers that are parties to foreign-to-foreign agreements having a substantial effect on U.S. commerce, and thereby not qualifying for immunity under section 7(a)(3), to obtain antitrust immunity for their activities under section 7(a)(1) of the Act by voluntarily filing the agreement under section 5. Although section 5(a) excepts such agreements from mandatory filing, there is nothing in section 5(a) which would prohibit filing on a voluntary basis. [2] Section 5(a)

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[1] One of these categories applies to agreements to "control, regulate or prevent competition in international ocean transportation." 46 U.S.C. app. 1703(a)(6). With regard to this category, the Report of the Senate Committee on Commerce, Science, and Transportation ("Senate Report") states: "The immunity granted herein is coextensive with the scope of the antitrust laws." S. Rep. No. 3, 98th Cong., 1st Sess. 22 (1983). The legislative history thus suggests that the 1984 Act was intended to preclude any gap in antitrust immunity.

[2] The legislative history of section 7 of the 1984 Act would appear to confirm this view. In a discussion of section 7 antitrust immunity, the Report of the House Committee on the Judiciary ("Judiciary Report") states:

> The Committee notes that because agreements involving transportation between two foreign countries *need not* be filed under this Act * * *, the only remedy available to a plaintiff injured * * * would likely be under the antitrust laws.

(Emphasis added). H.R. Rep. No. 53, Part 2, 98th Cong., 1st Sess. 32-33 (1983). The inference which may be drawn from this passage is that while foreign-to-foreign agreements "need not" be filed, nothing in the Act precludes voluntary filing.

therefore does not appear to preclude the voluntary filing of foreign-to-foreign agreements where a need exists and a valid regulatory purpose would be served. Such a need and purpose would appear to be present in the case of foreign-to-foreign agreements which have a substantial effect on the commerce of the United States and would thus remain subject to the antitrust laws under section 7(a)(3).

Taken together, sections 4(a), 5(a), 7(a)(1) and 7(a)(3) can be read to provide antitrust immunity, through an effective agreement, for voluntarily filed foreign-to-foreign agreements where antitrust exposure may exist. If an agreement having foreign-to-foreign scope were filed and became effective, it would receive antitrust immunity under section 7(a)(1). If, on the other hand, the parties to a foreign-to-foreign agreement chose not to file it, or the Commission declined to assert jurisdiction, the agreement would be subject to the antitrust laws insofar as it had a "direct, substantial, and reasonably foreseeable effect on the commerce of the United States." 46 U.S.C. app. 1706(a)(3).

Although the definition of "common carrier" contained in section 3(6) of the Act requires transportation from "a port in the United States," this limitation need not be read as defeating Commission jurisdiction over an agreement (or that part of an agreement) that involves transportation solely between foreign countries. The statutory definition merely requires that a carrier serve a U.S. port in order to be a "common carrier." Thus, if a carrier does serve a U.S. port (and otherwise meets definitional requirements), it is a "common carrier" within the meaning of the Act and *in personam* jurisdiction is established.[3]

Except as noted above, the legislative history of the 1984 Act does not appear to directly address the Commission's jurisdiction over foreign-to-foreign agreements. The committee reports do indicate that a carrier must serve a U.S. port in order to be considered an "ocean common carrier." Thus, the Report of the House Committee on Merchant Marine and Fisheries ("Merchant Marine Report") states:

> The term "ocean common carrier" is based on the definition of "common carrier by water in foreign commerce" in section 1 of the Shipping Act with the added provision that the carrier must operate the vessel providing the transportation by water.
>
> The phrase "by water" in the definition makes it clear that the transportation referred to is water transportation from the United States to a foreign country. Thus, the definition does not encompass the so-called Canadian diversion situation where cargo is transported by land from the United States to a contiguous foreign country and from there by water to an overseas foreign country.

H.R. Rep. No. 53, Part I, 98th Cong., 1st Sess. 29 (1982).

Similarly, the Senate Report, with regard to the definition of "common carrier," states:

> The definition also provides that carriers operating solely through ports of contiguous nations are not included within the terms of the definition. This definition applies only to the extent the passengers or cargo transported are loaded or discharged at a U.S. port. Thus, a liner carrier that accepts U.S.-origin intermodal cargo (or, for that matter, Canadian-origin cargo) at Halifax and calls at Boston for further loading en route to Rotterdam would be a "common carrier" for purposes of the bill only with respect to the Boston-Rotterdam leg of its voyage.

Senate Report at 19.

This legislative history, however, need not necessarily be interpreted as excluding foreign-to-foreign agreement scope from the Commission's jurisdiction. The thrust of these statements is that the Commission does not have jurisdiction to regulate such cargo movements. The legislative history does not address the question of Commission jurisdiction over foreign-to-foreign scope in an agreement between two parties that otherwise meets the statutory definition of an "ocean common carrier."

The Commission recognizes that it is without power to require the filing with it of rates established pursuant to any foreign-to-foreign agreements over which it may ultimately exercise jurisdiction.[4] Therefore, the tariff filing requirements of section 8 of the Act, 46 U.S.C. app. 1707, do not apply to such foreign transportation movements.[5] Because the Commission cannot exercise direct jurisdiction over the filing and level of such rates, it may be questioned whether it should assert jurisdiction and confer antitrust immunity upon the underlying agreement.

This question was at least indirectly addressed in *Maatschappij "Zeetransport" N.V. (Oranje Line) et al.* v. *Anchor Line Limited et al.*, 5 F.M.B. 714 (1959). (*"Oranje Line"*). There, in asserting jurisdiction over the agreement in order to grant antitrust immunity in the absence of power to regulate foreign-to-foreign rates, our predecessor, the Federal Maritime Board, relied on a series of Supreme Court cases holding that the question of an agency's jurisdiction to immunize agreements is not limited by its plenary power to regulate rates.[6] Thus, under the Shipping Act, 1916 ("the 1916 Act"), 46 U.S.C. app. 801–842, the Commission and its predecessors have asserted jurisdiction over foreign-to-foreign agreements between common carriers which covered both the foreign commerce of the United States and the intimately related commerce between foreign nations.

Under the Shipping Act of 1984, the Commission has continued to accept for filing and effectiveness agreements which include contiguous foreign-to-foreign scope within their terms, as well as modifications which add such scope to effective agreements. The purpose of this rulemaking is to formalize or reverse this policy.

The Commission's existing policy under the 1984 Act of asserting

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[3] In this regard, it may be noted that section 13(b)(5), 46 U.S.C. app. 1712(b)(5), grants the Commission authority to impose penalties upon common carriers in foreign-to-foreign trades. Section 13(b)(5) states in part:

> If, after notice and hearing, the Commission finds that the action of a *common carrier*, acting alone or in concert with any person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to *ocean trade between foreign ports*, the Commission shall take action that it finds appropriate * * *.

(Emphasis added). The Commission's authority here would appear to be based on its *in personam* jurisdiction over any entity meeting the statutory definition of "common carrier" and would cover a "common carrier's" operations in foreign trades on a world-wide basis.

[4] *See Austasia Intermodal Lines, Ltd.* v. *Federal Maritime Commission*, 580 F.2d 642 (D.C. Cir. 1978) (*ACE*). In *ACE*, the court held that a company which shipped cargo overland out of the United States and then solely between foreign ports was not a common carrier by water within the meaning of the 1916 Act and therefore was not subject to the 1916 Act's tariff filing requirements. The Court distinguished such a movement from those in which a U.S. port was involved.

[5] Other sections of the 1984 Act may nevertheless be applicable to agreements and agreement activities. At a minimum, the Commission might remedy conditions in contiguous trades by taking action in U.S. foreign trades over which it has direct jurisdiction. *See Imposition of Surcharge by the Far East Conference at Searsport, Maine*, 9 F.M.C. 129 (1965).

[6] In *Pacific Seafarers, Inc.* v. *Atlantic & Gulf American-Flag Berth Operators*, 8 F.M.C. 461 (1963), the Commission held that certain agreements were not within its jurisdiction where they related solely to foreign interport trade of goods of foreign origin and destination and were not part of any agreement on file with the Commission. The Commission reasoned that the underlying financial arrangements, the only link to U.S. foreign commerce, were not a basis for converting foreign-to-foreign commerce into the foreign commerce of the United States. In a decision on appeal in a related antitrust case, the Court of Appeals expressed doubt "whether the Commission correctly disclaimed jurisdiction over the commerce [involved in *Pacific Seafarers*]." *See Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F.2d 804, 819 (D.C. Cir. 1968).

jurisdiction over foreign-to-foreign agreements and conferring antitrust immunity would appear to be in keeping with Congress' intent not only to provide protection to the shipping industry from U.S. antitrust laws but also to reconcile those laws with the laws and practices of other nations in the international shipping community. One of the stated purposes of the 1984 Act is to harmonize, insofar as possible, U.S. maritime regulation with international shipping practices, 46 U.S.C. app. 1701(2). In fact, harmonization of U.S. laws with the policies and practices of our trading partners is a recurring theme of the legislative history of the 1984 Act. Thus, the Senate Report states that:

> * * * foreign ocean commerce is a two-way street involving the United States and its foreign trading partners. While the Commission is not expected to abdicate its responsibilities under this bill in the face of foreign opposition, it is encouraged to administer this bill in a way that will minimize conflicts with the interests of our trading partners.

Senate Report at 18–19. The Senate Report also notes that the erosion of carrier antitrust immunity has had an adverse effect on efforts to promote comity with our trading partners. *Id.* at 6. Similarly, the Judiciary Report states that this legislation "* * * is another step * * * to arrive at an * * * internationally harmonized regulatory scheme for ocean carriage." Judiciary Report at 2. An interpretation of the 1984 Act which includes foreign-to-foreign agreements within the Commission's jurisidiction is consistent with this stated purpose of the Act.[7]

II. Proposed Exemption of Foreign-to-Foreign Agreements

Section 16 of the 1984 Act, 46 U.S.C. app. 1715, authorizes the Commission to exempt any class of agreements between persons subject to the Act from any requirement of the Act, "if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in substantial reduction in competition, or be detrimental to commerce." Pursuant to the authority of section 16, the Commission is proposing to exempt certain foreign-to-foreign agreements among ocean common carriers in contiguous trades from certain statutory and regulatory requirements, if they are filed voluntarily.

Under the proposed rule, a foreign-to-foreign agreement would qualify for an exemption provided it is included in an agreement that covers a contiguous U.S.-foreign trade. Historically, the Commission's regulatory experience under both the 1916 Act and the 1984 Act has been with such agreements. On the basis of this experience, the Commission believes that the required contacts and effects on U.S. foreign commerce may reasonably be presumed and that these agreements would be appropriate subjects for an exemption. The proposed exemption would not apply to other foreign-to-foreign agreements that did not involve a contiguous U.S.-foreign trade. Those agreements could nevertheless be submitted to the Commission for review on a case-by-case basis under the usual procedures.

The proposed exemption should promote international comity by providing a clear mechanism for obtaining antitrust immunity for certain foreign-to-foreign agreements that may not qualify for immunity under section 7(a)(3). This exemption establishes a procedure for the voluntary filing of such agreements and reduces the statutory and regulatory requirements that would otherwise apply to a filed agreement. The exemption thus accommodates the interests of foreign nations without intruding upon commerce between foreign nations, an area not subject to Commission regulation.

The exemption of qualifying foreign-to-foreign agreements would also appear to further another stated purpose of the 1984 Act, *i.e.*, to establish a regulatory process "with a minimum of government intervention and regulatory costs." 46 U.S.C. app. 1701(1). The proposed exemption would eliminate delay in the implementation of business arrangements and would minimize the cost and expense to the parties associated with the administrative processing of these agreements. Furthermore, the Commission itself would experience reduced administrative costs and burdens. To the extent that it would conserve resources that would otherwise be expended in processing, the exemption would enhance the Commission's effectiveness.

The proposed exemption would not appear to substantially impair effective regulation by the Commission. As noted above, foreign-to-foreign agreements are not required to be filed. Exempting certain of these agreements from notice, waiting period and information requirements would not impair regulation. In order to obtain immunity under section 7(a)(1) of the Act from possible antitrust exposure, parties may elect to file the agreement on a voluntary basis. The Commission would monitor those foreign-to-foreign agreements filed voluntarily. Acceptance of such filings would serve a regulatory purpose inasmuch as Commission records would reflect, on a continuing basis, the current practices of an agreement's members. Further, the filing of such agreements would be consistent with the Commission's rule under 46 CFR 572.103(g), which sets forth the need for clear and definite agreement language expressing the complete understanding of the parties.

Finally, the Commission does not have any information or experience which would indicate that the proposed exemption would be unjustly discriminatory, result in substantial reduction in competition, or be detrimental to commerce. While qualifying foreign-to-foreign agreements are presumed to have "a direct, substantial, and reasonably foreseeable effect *on the commerce of the United States,*" there is no indication that such arrangements would *substantially reduce competition* or otherwise be detrimental to the U.S. commerce.

III. Item-by-Item Discussion of Proposed Amendments to Part 572

A. Section 572.309 Contiguous Trade Foreign-to-Foreign Agreements—Exemption

Section 572.309(a) defines contiguous trade foreign-to-foreign agreements by reference to a new proposed § 572.203. The 1984 Act does not expressly define such agreements. The definition, however, follows the language of the statute in section 5 which excepts from filing "agreements related to transportation to be performed within or between foreign countries." The definition also draws on the language of section 7(a)(3) which grants antitrust immunity to a foreign-to-foreign agreement "that relates to transportation services within or between foreign countries, whether or

[7] In *Atchison, Topeka and Santa Fe Railway Co. v. United States*, 597 F.2d 593 (7th Cir. 1979), the court held that the Interstate Commerce Commission had jurisidiction to approve agreements among railroads of intrastate rates that affected interstate commerce and thereby confer antitrust immunity upon such agreements. In doing so, the court looked to the purpose of Congress "* * * of harmonizing and reconciling the policy of the antitrust laws, as applicable to common carriers, with the national transportation policy * * *." *Id.* at 594. The court expressly rejected a reading of the ICC Act that would have made the scope of antitrust immunity less extensive than the antitrust laws themselves. The court stated: "In our view, the creation of such a regulatory gap cannot be squared with congressional purpose of 'reconciling' the antitrust laws with the national transportation policy." *Id.* at 594.

not via the United States, unless that agreement * * * has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States." The intent of the definition is to reach those foreign-to-foreign agreements which, in the parties' estimation, may not qualify for a section 7(a)(3) exemption because of their effect on U.S. commerce.

The proposed exemption would apply only to foreign-to foreign agreement scope that is included in an agreement that covers a U.S.-foreign trade that is geographically contiguous to the foreign scope. Where the foreign-to-foreign agreement is contiguous to a U.S. trade, an effect on U.S. commerce may reasonably be presumed. Foreign-to-foreign agreements that are not contiguous to a U.S. trade would not be eligible for an exemption, but could still be filed voluntarily and processed under the usual procedures. In the case of such agreements, the effect on the U.S. commerce is not likely to be so readily apparent and such agreements should therefore be reviewed on a case-by-case basis.

The proposed exemption would also apply only to agreement filings that are exclusively foreign-to-foreign. If a single agreement were filed for effectiveness that included both foreign-to-foreign and foreign-to-U.S. movements in its scope, the entire agreement would be processed according to the usual procedures. This is because it would not be practical to segregate the strictly foreign-to-foreign aspects of the agreement for treatment as an exemption while the remainder of the agreement received regular processing. However, if an amendment were filed to an effective agreement which merely added foreign-to foreign scope to the agreement, then the amendment could be processed under this exemption.

Section 572.309(b) states the elements of the exemption. Agreements that meet the definitional requirements of § 572.309(a) would be exempt from notice, waiting period and Information Form requirements, if filed voluntarily, and would become effective upon filing. However, such agreements would still be subject to the format requirements of Part 572

B. Technical Amendment

This rulemaking would also make certain technical amendments to Part 572 in order to accommodate the Commission's acceptance of foreign-to foreign agreement filings generally, and the inclusion of the proposed exemption for certain of these agreements. Section 572.202(c) currently states that Part 572 does not apply to:

(c) Any agreement related to transportation to be performed within or between foreign countries;

The proposed rule would delete this paragraph and add a new § 572.203 for foreign-to foreign agreements. The proposed new section would read as follows:

§ 572.203 Foreign-to-foreign agreements.

This part does not apply to any agreement by or among two or more ocean common carriers that relates to transportation services within or between foreign countries, whether or not via the United States, provided however that where the parties deem such an agreement to have a direct, substantial and reasonably foreseeable effect on the commerce of the United States, such an agreement may be filed on a voluntary basis.

These technical amendments are made necessary by the status of foreign-to-foreign agreements under the 1984 Act. Such agreements are not subject to mandatory filing requirements. They do however qualify for antitrust immunity under section 7(a)(3) of the Act, unless they have direct and substantial effects on U.S. commerce. Where section 7(a)(3) immunity may not apply, antitrust immunity may be obtained under section 7(a)(1) by voluntary filing. In order to accommodate the unique position of these agreements within the scheme of the 1984 Act, a new § 572.203 is proposed. This section would preserve the status of these agreements as not subject to Part 572, unless filed voluntarily by the parties.

IV. Conclusion

For the reasons stated above, the Commission proposes to amend Part 572 to provide for the acceptance of voluntarily filed foreign-to-foreign agreements for 1984 Act effectiveness, and to establish an exemption for certain foreign-to-foreign agreements, when filed voluntarily, from statutory and regulatory requirements of the Act and this part. The purpose of the proposed exemption is to promote international comity, eliminate delay in agreement effectiveness, lessen costs to parties, and conserve Commission resources.

In this rulemaking, the class of agreements exempted would be limited to agreements with foreign-to-foreign scope that are part of agreements which also embrace a contiguous U.S.-foreign trade, where the requisite effects on U.S. commerce may reasonably be presumed. Commission jurisdiction over such agreements is, of course, the necessary basis for the Rule's exemption. For reasons stated above, a basis for such a rule appears to exist. The Commission, however, invites interested persons to comment on the question of whether the Commission has jurisdiction over foreign-to-foreign agreements and whether a distinction should be drawn between those foreign-to-foreign agreements that are included in agreements which do specify a U.S. port within their scopes, and those exclusively foreign-to-foreign agreements that do not specify a U.S. port.

The Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, The Federal Maritime Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 572

Antitrust, Administrative practice and procedure, Contracts, Maritime carriers.

Therefore, pursuant to 5 U.S.C. 553 and sections 4, 5, 6, 16, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1703, 1704, 1705, 1715, and 1716), Part 572 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709, 1710, 1712, 1714–1717.

§ 572.202 [Amended]

2. Section 572.202 is amended by removing paragraph (c) and redesignating paragraphs (d), (e), (f) and (g) as (c), (d), (e) and (f) respectively

3. A new § 572.203 is added to read as follows:

§ 572.203 Foreign-to-foreign agreements.

This part does not apply to any agreement by or among two or more ocean common carriers that relates to transportation services within or

between foreign countries, whether or not via the United States, provided, however, that where the parties deem such an agreement to have a direct, substantial and reasonably foreseeable effect on the commerce of the United States, such an agreement may be filed on a voluntary basis.

4. A new § 572.309 is added to read as follows:

§ 572.309 Contiguous trade foreign-to-foreign agreements—exemption.

(a) A contiguous trade foreign-to-foreign agreement is an agreement by or among two or more ocean common carriers that relates to transportation services specified in § 572.203 and that is part of an agreement that includes a contiguous U.S.-foreign trade within its geographic scope.

(b) Any contiguous trade foreign-to-foreign agreement, as defined under § 572.309(a), that is filed with the Commission, is exempt from the notice, waiting period and Information Form requirements of the Act and of this part, and is effective upon filing.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-27975 Filed 12-7-87: 8:45 am]

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46 CFR Part 588

[Docket No. 87-25]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Taiwan Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission has determined that conditions unfavorable to shipping appear to exist in the foreign oceanborne trades between the United States and Taiwan with respect to the ownership and operation of dockside equipment and facilities and the operation of container terminals at Taiwan ports by U.S.-flag carriers. Taiwan-flag carriers do not appear to be subject to similar restrictions in Taiwan or at U.S. ports. The proposed rule would alternatively suspend the tariffs of Taiwan carriers in U.S.-Taiwan trades; or suspended any transshipment agreements, as well as the terminal agreements at U.S. ports to which Taiwan carriers are parties. The effect of the proposed rule would be to adjust or meet the unfavorable conditions by imposing burdens on Taiwan carriers which approximate those imposed on U.S.-flag carriers by Taiwan laws, regulations, policies, and practices.

DATE: Comments (original and 15 copies) due on or before January 7, 1988.

ADDRESS: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the authority of section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("section 19"), the Federal Maritime Commission ("Commission" or "FMC") is authorized and directed "[t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular route or in commerce generally, and which arise out of or result from foreign competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country."

The Commission's regulations describing the circumstances under which section 19 authority may be invoked and the nature of the regulatory actions contemplated, are set forth at 46 CFR Part 585—*Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States* ("Section 19 Regulations"). The types of conditions which the Commission generally presumes to be unfavorable to shipping are stated in 46 CFR 585.3, and include those which impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade; preclude or tend to preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors; and are otherwise unfavorable to shipping in the foreign trade of the United States. 46 CFR 585.3 (a), (c), (d).

The section 19 Regulations provide further that upon a finding that unfavorable shipping conditions exist, the Commission may take certain remedial actions. Such actions include: imposition of equalizing fees or charges; limitation of sailings to and from United States ports or of amount or type of cargo during a specified period; suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports; and any other action the Commission finds necessary and appropriate in the public interest to correct unfavorable shipping conditions in the U.S. foreign trade. 46 CFR 585.9.

It appears that unfavorable shipping conditions, within the meaning of section 19, exist in the foreign oceanborne trades between the United States and Taiwan. More specifically, Taiwan laws, regulations, policies and practices appear to impose burdens and restrictions on U.S.-flag carriers at Taiwan ports to which Taiwan-flag carriers are not subject at United States ports. Accordingly, the Commission is proposing this rule to remedy the apparent unfavorable shipping conditions in the U.S.-Taiwan trades.

II. Background

On April 15, 1987, the Commission issued an order pursuant to section 15 of the Shipping Act of 1984, 46 U.S.C. app. 814, which sought information concerning shipping conditions in the United States/Taiwan trades. *See Inquiry Into Laws, Regulations and Policies of Taiwan Affecting Shipping in the United States/Taiwan Trade* ("Section 15 Order"). The section 15 Order was directed toward the non-Taiwan-flag ocean common carriers serving the United States/Taiwan trade (the "Trade"). The purpose of the section 15 Order was to obtain information in order to allow "* * * for as complete an assessment of the situation in the Trade as possible, enabling the Commission to determine whether the trade between the United States and Taiwan is being subjected to conditions unfavorable to shipping which arise out of or result from laws, rules of regulations of the Taiwan authorities and therefore whether action under section 19 is warranted or required." Section 15 Order at p. 3.

Concurrently with the issuance of the Section 15 Order, the Commission published a notice in the **Federal Register** (52 FR 13520, April 23, 1987) ("Notice") inviting public comment on the issues involved in the Taiwan inquiry, and sent letters to the U.S. Department of State ("DOS") and the U.S. Department of Transportation ("DOT").[1] The Commission has received

[1] The information sought from DOS and DOT concerned, in part, discussions between

Continued

responses to its Section 15 Order from the ocean common carriers surveyed. The Commission has also received answers to its letters from DOT and DOS. In addition, the U.S.-Flag Far East Discussion Agreement ("Agreement 10050") submitted a comment in response to the Notice.

The Commission's inquiry was directed to a variety of restrictions upon ocean common carriers serving the United States/Taiwan trade. The section 15 Order noted that:

> U.S.-flag, and possibly other non-Taiwan ocean carriers, are prevented by various laws, rules, and regulations of the Taiwan authorities from establishing, owning or operating ancillary functions in the manner they believe to be most efficient for their intermodal operations between the United States and Taiwan. These restrictions appear to be without parallel for Taiwan carriers' operations in the United States.

Section 15 Order at p. 2. The section 15 Order contained a series of questions seeking information about several issues of concern to the Commission. These included restrictions on the ability of non-Taiwan nationals or companies to do the following in Taiwan: (1) Operate a trucking service; (2) obtain the license(s) necessary to operate a container terminal; (3) obtain licenses to operate shipping agent services; (4) own or operate dockside facilities or equipment ancillary to the performance of international ocean shipping; and (5) move equipment, including that used in functions ancillary to vessel operation, between other countries and Taiwan. The Commission also sought information relating to the taxing, collection, transfer and utilization of revenues earned from international ocean shipping operations in Taiwan.

Two principal issues emerged from this inquiry as particularly acute and urgent problems facing non-Taiwan shipping companies doing business in Taiwan: (1) Ownership and control of dockside equipment in Taiwan is restricted; and (2) obtaining licenses for operating container terminals in Taiwan is limited. These two issues were identified as paramount concerns in responses to the section 15 Order. Although the April Discussions between AIT and CCNAA resulted in Agreed Minutes which contained commitments from CCNAA to reslove these issues, it would appear that subsequent progress on these two issues has not fulfilled those commitments. Further talks between representatives of AIT and CCNAA took place on November 13–14, 1987 ("November Discussions"). However, given the urgency of these two issues, and the apparent failure of Taiwan authorities thus far to meet their earlier commitments, the Commission has determined to take action at this time under section 19.

III. Discussion

The following information, provided in response to the Commission's inquiry into the Trade, focuses on the impact of Taiwan restrictions upon the operations of U.S.-flag carriers. Third-flag carriers, for the most part, reported minimal activity in the Trade. Moreover, those third-flag carriers with more than minimal service levels generally indicated that they do not have intermodal operations in Taiwan, but rely instead on local agents. Furthermore, most responding third-flag carriers, to the extent that they addressed the impact of Taiwan laws and regulations, stated that those laws did not have a great impact on their operations.

U.S.-flag carriers, on the other hand, have experienced considerable adverse impact upon their intermodal operations in Taiwan. The following is a summary of the information provided as a result of the Commission's inquiry. It addresses the issues of dockside facilities and equipment and container terminal licensing.

A. Dockside Facilities and Equipment

Article 12 of Taiwan's Commercial Harbour Law provides that, all facilities within the harbor area which involve substantial construction and relate to the entrance or exit of vessels and public security are to be erected by the harbor administration. All other facilities can be constructed and operated by public or private enterprises through contractual construction agreement or lease agreement. Taiwan shipping industries and Taiwan container terminal services, however, have a "preemptive" right thereto. The facilities erected by public or private enterprises are to be owned by the harbor administration agency. The public or private enterprise which erects the facilities can use them within a period mutually contracted between it and the harbor administration agency. In the case of Kaohsiung Harbor, the agency is the Kaohsiung Harbour Bureau ("KHB").[2]

U.S.-flag carriers, which lease certain pier areas in Taiwan, allegedly are not permitted to purchase or own necessary container lifting and handling equipment, such as gantry cranes, container stacking machines, top lifters, transtainers [3] and fork lifts. In practice, only facilities which the KHB is unable to offer can be furnished by a carrier, with advance approval. By administrative decision, U.S.-flag carriers which lease pier areas allegedly are not permitted to own or operate necessary equipment. Equipment must be leased from the KHB. The KHB can determine the brand, type and rental rate of the equipment supplied. The rental rates are calculated on a shortened (by about 50 percent) amortization schedule, instead of the normal, usable equipment life which is the stated policy of the Taiwan Ministry of Finance, and, as a result the rental rates appear to be excessive.

The KHB has permitted U.S.-flag carriers to procure container handling equipment in two ways. One is "public tender," a process said to be burdened with budget constraints, bureaucratic delays and other government restrictions. The other method is "purchase" and importation by the carrier if the KHB is unable to provide the equipment. The title to such "purchased" equipment must then be transferred to the KHB.

U.S.-flag carriers are unable to purchase equipment or freely transfer their own equipment within the Pacific Basin area. In several instances, when the KHB has been unable to finance the purchase of equipment for leased piers, carriers have been permitted to "purchase" and import equipment, provided that they turn it over to the KHB. In return, the carrier gets a period of "rent-free" use of the equipment (maintenance costs are covered by another payment). The "rent-free" period may be 5 to 7 years. When it becomes necessary to replace old gantry cranes with new, non-Panamax cranes essential to working new, larger vessels, the carrier must "buy back" the equipment.

The estimated annual impact on U.S.-flag carriers in requisite equipment leasing expenses paid to Taiwan's local harbor bureau, is $17 million. These leasing costs are approximately $4.5 million a year in excess of the

representatives of the American Institute in Taiwan ("AIT") and the Taiwan Coordination Council for North American Affairs ("CCNAA"). The discussions between AIT and CCNAA were held on April 6–7, 1987 ("April Discussions") and resulted in Agreed Minutes.

[2] Kaohsiung Harbor is the principal port for U.S.-flag carrier operations and is the leading port in Taiwan.

[3] A transtainer is a dockside container stacking machine that, depending on the level of sophistication involved, may cost between $250,000 and $1.5 million. The more expensive models are mounted on rails, are largely computerized, and stack containers in four rows up to 5 containers high.

reasonable amortization value of the equipment, including more than $1 million annually of labor markup and added charges imposed by the local harbor bureaus. The impact on U.S.-flag carriers is increased by some $3 million annually in added operating costs that result from their inability to transfer underutilized dockside equipment between their port facilities in Taiwan and other Asian countries.

Each harbor bureau in Taiwan can determine the brand, type and rental rate of the dockside equipment supplied to U.S.-flag carriers. This has required U.S.-flag carriers to maintain expensive, duplicative inventories of spare parts needed for the operation of two or more brands of similar dockside equipment. The carrier is unable to select compatible equipment or to make commercial choices on the basis of a machine's service history, performance record and known problems, and likely longevity. The restriction further diminishes the carrier's ability to interchange dockside equipment within a particular port area or to transfer underutilized equipment in the Asia-Pacific region.

Agreement No. 10050 in its comment states that U.S.-flag carriers should be given the option to select, purchase and own equipment used in their dockside operations in Taiwan. U.S.-flag carriers should also be permitted to freely transfer such equipment into and out of Taiwan to facilitate their capacity to meet systemwide operational demands. At a minimum, to the extent that some equipment must continue to be rented, local harbor bureaus should be required to calculate rental rates on the basis of established Ministry of Finance policy regarding amortization, according to Agreement No. 10050.[4]

The April Discussions addressed the issue of ownership, operations, buying, selling, importing and exporting dockside container handling equipment. Paragraph (C) of the Agreed Minutes reports:

> CCNAA said that there is no legal prohibition of such activities nor is there any legal requirement to depend on harbor authorities for leasing or management of such equipment. U.S. carriers are restricted in such matters only by their current harbor space leasing contracts with harbor authorities. CCNAA said that carrier ownership of equipment would be subject to commercial negotiation between carriers and harbor authorities when current leases expire or are otherwise renegotiated in accordance with the contract provisions. AIT said that it expects that renegotiation of harbor space leases will not result in unreasonable rents. CCNAA said that it would strongly urge harbor authorities to negotiate reasonable terms in line with current international practice, without regard to whether the tenant owns or leases container equipment. AIT agreed to supply CCNAA with model port leasing contracts and pricing standards of international ports comparable to Kaohsiung harbor.

Subsequent developments, however, do not appear to have borne out the expectations expressed in the Agreed Minutes. A supplemental response to the section 15 Order, received by the Commission on August 27, 1987, stated that no progress was being made on the issue of dockside equipment. This response indicated that the difference between what might be considered standard international port terms and conditions for dockside equipment procurement, and the terms imposed by the KHB, will cost affected carriers about $114 million over the life of the equipment. It is further alleged that although representatives of the Taiwan authorities agreed in the April Discussions that the central government would take steps to moderate the demands of the KHB in the area of equipment ownership and rental, efforts continue to be frustrated by the policies and practices of the KHB management.

As the above summary indicates, there is considerable indication that U.S.-flag carriers face burdensome, restrictive requirements in Taiwan with respect to the ownership and operation of dockside equipment and facilities. Although certain commitments were made in the Agreed Minutes of the April Discussions between AIT and CCNAA, it appears that little progress has been made to implement those commitments. It appears that U.S.-flag carriers continue to experience the same inability to purchase, import, or re-export their own dockside equipment. These restrictions appear to have affected the efficient operation of U.S.-flag carriers at Taiwan ports by significantly increasing their costs of doing business there.

Taiwan-flag carriers, on the other hand, do not appear to be burdened by such costs in Taiwan. Moreover, there is nothing to indicate that Taiwan carriers encounter any similar restrictions on the ownership and operation of dockside equipment at U.S. ports. It therefore appears that the laws, regulations, policies and practices of Taiwan authorities have created conditions unfavorable to shipping in the U.S.-Taiwan trade.

It is less apparent that there are differences in treatment with respect to the rental of dockside equipment and facilities. The information received by the Commission contains allegations that U.S.-flag carriers may not be able to obtain reasonable rents on equipment that comport with the rents charged at comparable international ports. At this point, this information does not enable the Commission to quantify precisely the differences in terms and treatment accorded Taiwan-flag carriers *vis-a-vis* U.S.-flag carriers with respect to equipment rental at Taiwan ports. Nevertheless, while a complete picture may not yet be apparent, the information received does raise serious questions regarding disparities in rental rates for U.S.-flag carriers. This issue is therefore one which the Commission invites interested persons to provide additional information on through participation in this rulemaking proceeding.

In addition, persons commenting on the proposed rule are invited to address the question of whether liberalizations with respect to equipment ownership and reasonable rental rates should apply not only to equipment which is currently in use (and may be subject to renegotiated terms) as well as to equipment not yet delivered but which has been the subject of preliminary negotiations or letters of intent.

B. Container Terminal Licenses

The Taiwan Shipping Enterprise Act of 1981 and the Ministry of Communications' ("MOC") Regulations Governing Operations of Container Terminals issued thereunder appear to have been interpreted and applied so as to prohibit U.S.-flag carriers operating in Taiwan from having more than a one-third ownership interest in certain commercial activities, such as container terminal and shipping agency businesses. Only a company organized under Taiwan law may engage in such business activities. Also, two-thirds of such company's capital stock must be owned by Taiwan citizens. Further, the board chairman and two-thirds of the directors of a container terminal operator company must be citizens of Taiwan.

U.S.-flag carriers have not been permitted to own, control or operate container terminal operations, even at facilities dedicated to their use.

[4] Agreement No. 10050 also states that the ability to freely own, operate, buy, sell, import and export ancillary freight service equipment, is "of critical concern and utmost urgency." It is alleged that although Taiwan central authorities maintain that no law precludes such activities, control over them rests with provincial authorities which steadfastly refuse of remove the restrictions. It was reiterated that the problem is most pressing with respect to dockside container handling equipment, because U.S. carriers must finalize equipment orders for their new terminal facilities; it also, however, remains a problem for other types of equipment, such as container chassis.

However, resolution of the container terminal issue may not require a statutory change. The relevant Taiwan statute could be interpreted to permit such operations by U.S.-flag carriers for reasons of reciprocity and fairness. Article III, section 3 of the Treaty of Friendship, Commerce and Navigation between the U.S. and Taiwan ("FCN Treaty") applies the concept of national treatment for each country's corporations in the other, unless otherwise provided by law. By the terms of Taiwan law, U.S. companies appear not to have been prohibited from establishing terminal services. It would therefore further appear and they should be accorded national treatment. Also, Article VI, section 4 of the FCN Treaty assures access to each other's agencies, such as those responsible for issuing necessary licenses for commercial operations.

It is reported that the subject of container terminal licenses was raised during U.S./Taiwan trade negotiations in 1985 and 1986. The matter was also raised by applications filed with the MOC by two U.S.-flag carriers containing requests for licenses to operate container terminals. The applications were denied by the MOC, despite language in the Taiwan Shipping Enterprise Act stating that reciprocal treatment should be accorded to carriers of those countries that permit Taiwan's carriers to engage in such activities.[5] In August, 1986, the two U.S.-flag carriers resubmitted applications with the MOC to operate container terminals.

Taiwan's International Harbour Warehouse Regulations, Articles 67 and 71, are cited. Article 67 states that private or state enterprises can invest in the management of terminal or warehousing businesses. Article 71 states that the priority in renting special facilities shall be given to Taiwan carriers, manufacturers, or warehousing businesses.

Lease and joint use arrangements have allowed U.S.-flag carriers to acquire exclusive use of wharves and adjacent terminal areas at the port of Kaohsiung only. However, control of part, shipside and inland terminal operations has been denied by a series of regulations, lease clauses, and unwritten interpretations.

At two of Taiwan's three major port facilities, the China Container Terminal Corporation ("CCTC"), which is partly government-owned, holds the sole license to offer port services. Such services include shipside container operation of certain equipment, including forklift trucks. CCTC charges considerably more than what an integrated operation by the carrier would cost. At its Kaohsiung facility, the amount that CCTC charges a U.S.-flag carrier on labor costs will result in 1987 in projected extra costs of $382,000.

One U.S.-flag carrier has submitted two separate applications for a terminal operator license. Both have been denied, and the subsequent appeals rejected. Another carrier had submitted two separate applications for a terminal operator license prior to the April Discussions. Both were denied, and an appeal rejected. U.S.-flag carriers state that they understand that Taiwan will change its policy, and grant them branch licenses to operate dockside facilities in Kaohsiung.

The Agreed Minutes resulting from the April Discussions report in Paragraph (A) that:

> CCNAA informed AIT that, henceforth, in accordance with Article 40 of the Shipping Act of 1981, U.S. carriers will be able, as branch offices, to apply for and receive licenses to operate as container terminal operators, and sea cargo forwarders in accordance with local laws and regulations. Container freight station operation is contingent on an inland container terminal license.

Follow-up discussions between U.S.-flag carriers and Taiwan officials appear to have been consistent with the above statement. However, when one carrier filed an application for a container terminal license in May, 1987, the application was rejected and returned by the KHB, which cited the lack of present authority under the law to issue the license.

Agreement No. 10050 contends that U.S.-flag carriers urgently require Taiwan licenses necessary to operate container terminals, as well as other activities such as shipping agencies, container freight stations, and sea cargo forwarding agencies. Such activities are permitted Taiwan-flag carriers in the U.S., as well as in Taiwan. Taiwan central authorities have recently indicated that U.S. carriers' applications for such licenses will be processed and granted pursuant to existing law. However, most of these matters fall within the jurisdiction of provincial authorities who have generally not been accommodating or cooperative in the past.

Recent changes in Taiwan regulations now appear to require U.S.-flag carriers to establish an inland container terminal in order to be eligible to apply for port container terminal licenses. However, for U.S.-flag carriers to set up an inland container terminal, prohibited until now, allegedly would: (1) Require new investment of up to $8 to 10 million per terminal; [6] (2) conflict with existing long-term contracts with Taiwan inland terminal operators; (3) require other conditions, such as land ownership, which may not be permitted under other Taiwan restrictions.

Moreover, a supplemental response to the Section 15 Order contains information on further developments on the container terminal issue. This response stated that, in order to obtain and use an inland terminal license, a U.S.-flag carrier probably would first have to purchase suitable land for such a terminal, as local counsel has advised that lease of land is probably not permissible. Under Taiwan law, purchase of land by a foreign corporation appears to require approval of both local government and central government agencies. This procedure is said to be very cumbersome.

In summary, little progress also appears to have been made on the issue of container terminal licenses subsequent to the April Discussions. It now appears that it is necessary to establish an inland terminal as a prerequisite to the establishment of a port terminal. Both the cost and administrative obstacles to setting up an inland terminal appear to be prohibitive. There would appear to be no rational reason to require an ocean carrier to have an inland container terminal before being licensed to operate waterside facilities. The reason for the requirement may reflect a bias in favor of Taiwan-flag carriers inasmuch as Taiwan-flag carriers already have inland terminal licenses, and therefore already qualify for port terminal licenses. In any event, the burden placed on U.S.-flag carriers in this respect appears to be unrelated to any commercial needs or operating requirements. Rather, it seems to be designed solely for the purpose of making such operations extremely difficult, if not impossible. A similar burden is not placed on Taiwan-flag carriers, who already have established

[5] Article 6 of this statute reads as follows:

Persons and juristic persons whose nationality is other than that of * * * [Taiwan] shall not be permitted to establish any organization for the purpose of doing business as a shipping agency or sea cargo forwarder or of operating container terminals; provided, however, *if the foreign government of these persons reciprocally accords the same rights to persons of juristic persons of * * * [Taiwan] and that an approval has been granted by the Ministry of Communications, the above restriction shall not apply.* (Emphasis added).

[6] To establish a terminal large enough to replace one carrier's existing contracted inland container facilities would require an investment of approximately $28 million.

inland terminals. Finally, it does not appear that Taiwan-flag carriers experience any such restrictions in the United States.

Accordingly, it appears that the policies of Taiwan authorities with respect to licensing of container terminal operations unfairly discriminante against U.S.-flag carriers and constitute a condition unfavorable to shipping in the Trade.

IV. Conclusion

It would appear that unfavorable shipping conditions may exist in the foreign oceanborne trades between the United States and Taiwan, under § 585.3 (a), (c) and (d), 46 CFR 585.3 (a), (c) and (d), of the section 19 Regulations. As a direct result of Taiwan laws, regulations, policies, and practices, conditions may exist which: (1) Preclude or tend to preclude U.S.-flag carriers from competing in the Trade on the same basis as Taiwan-flag carriers; (2) discriminate between U.S.-flag carriers and their foreign competitors; and (3) are otherwise unfavorable to shipping in the foreign trade of the United States. No such restrictions or unfavorable conditions appear to have been imposed by the United States on Taiwan-flag carriers.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 and the Commission's regulations at 46 CFR Part 585, the Commission hereby initiates, on its own motion, a rulemaking proceeding with respect to the apparent existence of unfavorable shipping conditions in the foreign oceanborne trade between the United States and Taiwan, and the appropriate remedy or remedies to adjust or meet those conditions.

The accompanying proposed rule states two alternative remedies to address unfavorable conditions: (1) Suspension of the tariffs of Taiwan carriers in the affected trades; and (2) suspension of transshipment agreements and of the terminal agreements at U.S. ports to which Taiwan carriers are parties.

Interested persons are encouraged to comment on the proposed rule including the proposed remedies. Factual submissions relating to conditions in the United States/Taiwan trade, where relevant, should include statistics showing present or prospective cargo loss, loss of customers, reduction in sailings or other impact on service, reduction in volume of exports or imports, impact on freight rates, and costs incurred through delay in shipment. To the extent possible factual submission should be supported by sworn documents and affidavits.

List of Subjects in 46 CFR Part 588

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares, Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, it is proposed to add a Part 588 to Title 46, Subchapter D, of the Code of Federal Regulations to read as follows:

PART 588—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES/TAIWAN TRADES

Sec.

Authority: 46 U.S.C. app. 876(1)(b); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

§ 588.1 Conditions unfavorable to shipping in the foreign trade with Taiwan.

The Federal Maritime Commission has determined that Taiwan has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, regulations, policies and practices which unreasonably restrict vessels of U.S.-flag registry from competing in the ocean trade between the United States and Taiwan on the same basis as Taiwan-flag carriers. Taiwan policies and practices unreasonably restrict the ownership and operation of dockside equipment and facilities and unreasonably hamper the ability of U.S.-flag carriers to obtain licenses to operate container terminals. The enforcement of these policies discriminates against U.S.-flag carriers and increases carrier costs and reduces carrier efficiencies in their port operations and activities, and hampers their ability to compete in the international market for liner services, thus resulting in conditions unfavorable to shipping in the foreign trade of the United States.

§ 588.2 Tariffs of Taiwan-flag carriers suspended.

(a) On a date 30 days from the issuance of a final rule, the following tariffs and all amendments thereto, insofar as they relate to the trade between the United States and Taiwan, are suspended in full:

Evergreen Marine Corporation

FMC No. 131—FROM Ports and Points in the United States and Puerto Rico via U.S. Atlantic, Gulf Coast Ports TO Ports in the Far East, Southeast Asia and West Asia.

FMC No. 132—FROM Ports and Points in the U.S. TO Ports and Points in Northeast Asia and Southeast Asia.

FMC No. 150—FROM Ports in the Far East, Southeast Asia, and West Asia TO Ports and Points in the United States and Puerto Rico via U.S. Atlantic, Gulf and Pacific Coast Ports.

Yangming Marine Transport Corp.

FMC No. 8—FROM Taiwan, Republic of China, Hong Kong, Australia, and India, Singapore, Bangkok, Port Kelang and Indonesia TO the United States Atlantic and Gulf Ports.

FMC No. 12—BETWEEN Rail Carrier's Terminals at U.S. Gulf Ports and U.S. Atlantic and Gulf Ports via U.S. Atlantic Ports and U.S. Pacific Ports AND Ports in Japan and South Korea and Taiwan and Hong Kong.

FMC No. 13—FROM Hong Kong, Taiwan, Republic of China, Europe, Australia and India, Indonesia, Singapore and Thailand, TO the United States Pacific Coast Ports.

FMC No. 16—FROM United States Pacific Coast Ports TO Ports and Outports in the Far East and to Outports in Southeast Asia and the Middle East as shown in the Outport Section.

FMC No. 20—FROM the United States Atlantic and Gulf Ports TO Taiwan, Japan, Korea, Hong Kong, Philippines, Australia and India.

FMC No. 26—FROM Ports and Points in the Far East, Middle East, Australia, the Continent and the United Kingdom TO Inland Points of the United States.

FMC No. 27—FROM Inland Points of the United States TO Ports and Points in Japan, Korea, Taiwan, Hong Kong, the Philippines, Australia, Saudi Arabia, Italy, West Germany, Netherlands, United Kingdom, Belgium, and France.

Orient Overseas Container Line, Inc.

FMC No. 122—FROM Hong Kong, Japan, Korea, Malaysia, Singapore and Taiwan TO Air Terminals in the United States via Water/Air and Water/Air/Motor.

Participation in FMC No. 16, the tariff of the Asia North America Eastbound Rate Agreement—FROM Korea, Hong Kong, Macao and Taiwan TO Ports and Points in the United States, Puerto Rico and U.S. Virgin Islands.

Participation in Tariff FMC No. 8, the tariff of the Transpacific Westbound Rate Agreement—FROM Ports and

Points in the United States and Canada TO Ports and Points in the Far East.

(b) Tariffs which may be filed by or on behalf of the above-mentioned carriers in the ocean trade between the United States and Taiwan shall also be suspended.

(c) All affected conference or rate agreement tariffs shall be amended to reflect the suspensions specified above. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carriers to all applicable remedies and penalties provided by law.

§ 588.3 Terminal and transshipment agreements of Taiwan-flag carriers suspended.

(a) On a date 30 days from the issuance of a final rule, the following agreements and all amendments thereto, insofar as they relate to the trade between the United States and Taiwan, are suspended in full:

Evergreen Marine Corporation

No. 224–004087—City of Los Angeles Preferential Use Agreement.

No. 224–010716—Port of San Francisco Terminal Use Agreement.

No. 224–010718—Virginia International Terminal Non-Executive Use Agreement.

No. 224–010763—South Carolina State Ports Authority Exclusive Use Agreement.

No. 224–010774—Georgia Ports Authority Terminal Lease Agreement.

No. 224–010804—City of Los Angeles Preferential Use Agreement.

No. 224–010825—City of Los Angeles Non-Exclusive Assignment Agreement.

No. 224–010854—Port of Oakland, California Terminal Use Agreement.

No. 224–011062—Maryland Port Administration Terminal Lease Agreement.

No. 224–011068—Port of Portland, Oregon Terminal Lease Agreement.

Yangming Marine Transport Corp.

No. 224–010749—Georgia Ports Authority Terminal Lease Agreement.

No. 224–010816—North Carolina State Ports Authority Terminal Lease Agreement.

No. 224–010826—City of Los Angeles Non-Exclusive Use Agreement.

No. 224–010929—City of Los Angeles Non-Exclusive Use Agreement.

Orient Overseas Container Line, Inc.

No. 224–010910—Port of Oakland, California Preferential Assignment Agreement.

No. 224–010926—Long Beach Container Terminal Container Terminal and Stevedoring Agreement.

No. 224–010956—Stevedoring Services of America Container Service Agreement.

No. 224–010957—Stevedoring Services of America Container Service Agreement.

No. 224–011081—South Carolina State Ports Authority Terminal Operating Agreement.

No. 224–010736 [1]—City of Long Beach Terminal Lease Agreement.

No. 224–011067 [1]—City of Long Beach Terminal Lease Agreement.

No. 218–010785—Non-Exclusive Transshipment Agreement Between Orient Overseas Container Line, Ltd. and Totem Trailer Express, Inc.

(b) Agreements which may be filed by or on behalf of the above-mentioned carriers in the ocean trade between the United States and Taiwan shall also be cancelled.

(c) Operation by any carrier under suspended, cancelled or rejected agreements shall subject said carriers to all applicable remedies and penalties provided by law. By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–28120 Filed 12–7–87; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–201; Advance Notice]

Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Protection Flaws, and Other Defects of Tank Car Tanks

AGENCY: Research and Special Programs Administration (RSPA), (DOT).

ACTION: Advanced notice of proposed rulemaking (ANPRM).

SUMMARY: RSPA and the Federal Railroad Administration (FRA) are considering new safety standards that would require railroad tank car owners and repair facilities to inspect for cracks after certain tank repairs to assure that no cracks exist. RSPA and FRA are also considering the revision of existing periodic reinspection requirements for tank car tanks to more adequately detect cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects. These new safety standards and revised periodic reinspection requirements could include specific inspection techniques to assure that small defects, which may grow in size, are properly identified and repaired or monitored.

DATE: Comments must be received by February 11, 1988.

ADDRESS: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8426 of the Nassif Building, 400 7th Street SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m., and 5:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, RRS-2, Washington, DC 20590, Telephone 202–366–0897.

SUPPLEMENTARY INFORMATION: As a result of actions taken in response to an incident involving a tank car tank leaking ethylene oxide on December 31, 1984, at North Little Rock, Arkansas, RSPA and FRA have identified a problem concerning tank car tanks with small cracks. Investigation of this incident revealed that the subject tank car tank had been equipped with an anti-shift bracket not in conformance with the Hazardous Materials Regulations (HMR) for such brackets on tanks carrying hazardous materials. FRA's Office of Safety subsequently reviewed construction records and had identified, by September 1985, approximately 9,000 hazardous materials tank car tanks with nonconforming brackets. These tanks were built by one manufacturer, which proposed to bring the affected tanks into conformance by means of a campaign to remove the noncornforming brackets, inspect the tank shell for cracks, and remove or repair detected cracks before returnng the tank to service.

During the retrofit program, FRA inspectors noted some anomalies in the procedure. Independently, FRA received reports from the Louisiana State Police of similar anomalies. In August 1985, the FRA's Associate Administrator for Safety asked the DOT Transportation Systems Center to make a preliminary technical assessment of the adequacy of

[1] Long Beach Container Terminal is a subsidiary of Orient Overseas Container (Holding) Ltd., and an affiliate of Orient Overseas Container Line. Long Beach Container Terminal is a party to these lease agreements with the City of Long Beach, California.

the manufacturer's inspection and repair procedures. The center formed a Task Force for this purpose, consisting of five senior engineering faculty members from three universities, a National Bureau of Standards expert on tank car steels, and two senior members of the Center's technical staff. The Task Force members are nationally recognized authorities on structures, structural fatigue, and fracture mechanics.

The Task Force issued a final report, which is available as part of this docket. This report documents the Task Force assessment of the inspection and repair procedures. The Task Force assessed three risks: (1) The risk that local reductions of shell thickness ("thin shell") might lead to burst failures; (2) the risk that the insepction procedure would not detect certain cracks which might continue to grow in fatigue during subsequent service; and (3) the risk that a weld repair might damage the shell if the repair procedure is not adequate. The thin shell issue is addressed in a separate notice of proposed rulemaking published elsewhere in today's **Federal Register**. The Task Froce has identified two major technical issues, related to crack detection and repair: (1) Adequacy of crack detection and (2) the ability to repair detected cracks without collateral damage.

In addition to the above study, the Task Force has also issued a report, which is part of this docket, concerning the retrofit installation of 'belly sitffeners' under the tank shell of certain tank car tanks. The report indicates that the shell belly should be nondestructively inspected for cracks. The report also indicates that post weld heat treatment, even for those situations in which 49 CFR 171.21(f) does not require postweld heat treatment, would be beneficial in reducing residual stresses which can promote crack initiation and growth.

In addition to the detection and repair of cracks arising from tank repairs, RSPA and FRA are also concerned with the detection and repair of cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects arising from causes other than tank repairs. 49 CFR 173.31(c)(3) generally requires that single unit tank car tanks in service 10 years or more be 'internally inspected' for defects during the periodic retest and reinspection of the tanks. There are no similar requirements for multi-unit tank car tanks, although § 173.31(d)(9) does allow the visual inspection of certain tanks as an alternative to periodic hydrostatic testing.

RSPA and FRA are concerned that the lack of specificity in the internal inspection requirements of 49 CFR 173.31(c)(3) for single unit tank car tanks and the absence of any internal inspection requirements for multi-unit tank car tanks, may result in the nondetection of small defects that may grow in size and lead to tank failure. RSPA and FRA are also concerned with the detection and repair of defects that are present on the external surface of tank car tanks, but which are obscured by insulation.

RSPA and FRA do not have quantitative data on how many tank car tanks have undetected cracks, pits, corrosion, lining flaws, thermal protection flaws, or other defects. However, we are aware that (1) some insulated tanks have substantial corrosion on the external tank surfaces, apparently due to a reaction between insulation components and condensation; (2) some tanks in corrosive service have large areas where internal corrosion has reduced the tank thickness to below the minimum thickness prescribed in Part 179 of the HMR and (3) the linings of some tanks have lost their integrity. Therefore, RSPA and FRA believe that there may be a significant number of tank car tanks that are stenciled and used as DOT specifications tank car tanks, but are actually noncomplying tank car tanks, because they have defects (such as unrepaired cracks, pits, corrosion, or lining flaws). Accordingly, these noncomplying tanks are not authorized to transport hazardous materials requiring the use of a DOT specification tank.

RSP and FRA have concluded that rulemaking may be needed to address the detection and repair of cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects. RSPA and FRA request all interested parties to provide comments on the questions listed below:

1. What types of tank car tank repairs are likely to lead to undetected cracks (e.g., grinding, arc gouging, welding)?
2. How effective is postweld heat treatment in reducing the growth of existing cracks or the formation of new cracks?
3. What inspection techniques (e.g., ultrasonic, magnetic particle, acoustic emission, and radioscopic) are appropriate to detect small cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects?
4. What techniques are appropriate to repair small cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects without causing collateral damage?
5. For small cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects, what alternatives to defect repair are appropriate (e.g. special handling, special train placement, and more frequent reinspections)?

Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice. In addition, commenters are encouraged to provide comments on "major rule" considerations under the DOT regulatory procedures (44 FR 11034), potential environmental impacts subject to the Environmental Policy Act, information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act.

Issued in Washington, DC on December 2, 1987 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director Office of Hazardous Materials Transportation.

[FR Doc. 87-28105 Filed 12-7-87; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 173

[Docket No. HM-201B; Notice No. 87-11]

Shippers; Use of Tank Car Tanks With Localized Thin Spots

AGENCY: Research and Special Programs Administration (RSPA), (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The RSPA and the Federal Railroad Administration (FRA) are proposing the development of safety standards that would (1) permit the use of railroad tank car tanks with tank shell thicknesses in localized areas less than the minimum specified in the Hazardous Materials Regulations (HMR) and (2) require the measurement of tank car tank thicknesses under certain conditions. This action is necessary to verify that tank repairs do not result in significant decreases in shell thicknesses. The intended effect of this action is to assure that tank repairs do not result in a reduction in the level of safety and to facilitate commerce by allowing the use of tank car tanks, with localized thin spots, which have been determined to be safe for the transportation of hazardous materials.

DATE: Comments must be received by February 11, 1988.

ADDRESS: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8426 of the Nassif Building, 400 7th Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, RRS-2, Washington, DC 20590, Telephone 202-366-0897.

SUPPLEMENTARY INFORMATION: Part 179 of the HMR specifies the minimum plate thicknesses for heads and shells of DOT specification tank car tanks. Section 173.31 of the HMR requires that tank cars used to transport hazardous materials be maintained to meet the requirements of Part 179. Sections 179.6 and 173.31(f) of the HMR specify that tank car tanks shall be repaired in compliance with Appendix R, Association of American Railroads Specification for Tank Cars. Appendix R specifically states that a tank car tank repair "means reconstruction of a tank to its original design."

Notwithstanding the regulatory standards cited in the preceding paragraph, RSPA and FRA believe that a significant number of tank cars that are stenciled and used as DOT specification tank cars may have localized areas of the shells in which the thicknesses are less than the minimum specified in Part 179 for the particular car type. Tanks with these localized "thin spots" are not in compliance with the current HMR; accordingly, they are not authorized for use in transporting hazardous materials requiring the use of a DOT specification tank car. RSPA and FRA believe that there may be some tank car tanks with localized "thin spots" that do not meet their original tank car tank specification, but may meet some other tank car specification. For example, a tank car tank that had originally been manufactured to the DOT 105A300W specification may qualify for the DOT 105A200W specification. Owners of these tank car tanks have the option of converting their tanks to a lower pressure test rating.

RSPA and FRA first became aware of the magnitude of the problem of tank cars with localized thin spots as a result of actions taken in response to an incident involving a tank car leaking ethylene oxide on December 31, 1984, at North Little Rock, Arkansas. Investigation of this incident revealed that the subject tank car had been equipped with an anti-shift bracket not in conformance with Federal Regulations for such brackets on tank cars carrying hazardous materials.

The FRA's Office of Safety subsequently reviewed construction records and had identified, by September 1985, approximately 9,000 hazardous materials tank cars with nonconforming brackets. These tank cars were built by one manufacturer, which proposed to bring the affected cars into conformance by means of a campaign to remove the nonconforming brackets, inspect the tank shell for cracks, and remove or repair any detected cracks before returning the tank cars to service.

During the retrofit program, FRA inspectors noted some anomalies in the procedures. In particular, the inspectors observed that some repair facilities were removing cracks by grinding the shell without subsequent restoration of the shell to the minimum prescribed thickness. Independently, FRA received reports from the Louisiana State Police of similar anomalies.

In August 1985, the FRA's Associate Administrator for Safety asked the DOT Transportation System Center to make a preliminary technical assessment of the adequacy of the manufacturer's inspection and repair procedures. The Center formed a Task Force for this purpose, consisting of five senior engineering faculty members from three universities, a National Bureau of Standards expert on tank car steels, and two senior members of the Center's technical staff. The Task Force members are nationally recognized authorities on structures, structural fatigue, and fracture mechanics.

The Task Force issued a final report, which is available as part of this docket. This report documents the Task Force assessment of the inspection and repair procedures. The Task Force assessed three risks: (1) The risk that local reductions of shell thickness might lead to burst failures; (2) the risk that the inspection procedure would not detect certain cracks which might continue to grow during subsequent service; and (3) the risk that weld repair might damage the shell if the repair procedure is not adequate. The report concluded that small localized reductions of shell thickness of less then one-sixteenth inch would not significantly reduce the bursting strength of a tank car tank. However, the report further concluded that the inspection procedure might not detect small cracks that could grow into unacceptably larger cracks and that the repair of detected cracks could cause collateral damage.

Based on the Task Force Report, RSPA and FRA believe that rulemaking is needed to address the issues of localized reduction of shell thicknesses and of crack detection and repair. This NPRM will only address the thin spot issue. For the purposes of this NPRM, the term "thin spot" does not include a deformation of the tank car tank with a small radius of curvature (i.e., a score or a gouge or any other potential stress riser). RSPA and FRA do not contemplate changing the current requirements for the repairs of scores or gouges. A separate ANPRM published elsewhere in today's **Federal Register** addresses the detection and repair of cracks, pits, corrosion, lining flaws and other defects of tank car tanks. The ANPRM also addresses defects that result from both repair operations and nonrepair related causes.

RSPA recognizes the inconsistency between the actions proposed in this notice for tank car tanks with thin spots and the actions previously taken by RSPA for cargo tanks with thin spots. In a Rule Related Notice published on April 7, 1983 in the **Federal Register** (48 FR 15217), RSPA noted that "if for any reason, a cargo tank does not meet the applicable specification under which it was constructed, its specification plate must be removed or rendered illegible thereby removing its certification as a specification cargo tank." The notice further stated that "* * * the minimum thickness requirement * * * is an essential function in determining the continuing qualification of a cargo tank as an authorized packaging. For example, if an MC310 cargo tank has a capacity of 2,000 gallons, its minimum thickness may be no less than ⅜ inch. If the tank is less than ⅜ inch thick at any point, e.g. as a result of internal or external corrosion, it may no longer be marked 'MC 310' on its identification plate, nor may it be used as a specification cargo tank under the HMR."

RSPA and FRA believe that there are two factors that justify the above inconsistency. First, the wall thicknesses of cargo tanks are generally thinner than the wall thicknesses of tank car tanks. New DOT specification cargo tanks must be manufactured to withstand a test pressure that can be as low as 3 psig. In contrast, the test pressure of DOT specification tank car tanks is at least 60 psig. In the preamble of a Notice of Proposed Rulemaking published on September 17, 1985 in the **Federal**

Register (50 FR 37766), it was noted that "research conducted by the states of Michigan and California and DOT has shown that failures of the tank shell * * * occur frequently in cargo tank oveturn accidents. In a substantial number of instances, these failures resulted in serious leakage, sometimes resulting in fires. These research studies showed that in many cases leakage resulted from tank shell puncture, tank shell rupture, * * *." RSPA believes that allowing the use of cargo tanks with thin spots could result in a significant increase in the frequency of tank shell failures. However, RSPA and FRA believe that allowing the use of tank car tanks with localized thin spots resulting from repairs will not significantly increase the risk of tank shell failure, because tank car tanks have relatively thick walls.

Furthermore, the requirements for the qualification, maintenance, and use of cargo tanks are different than the corresponding requirements for tank car tanks. In general, the only explicit reinspection requirement for cargo tanks is an external visual inspection at least once in every two years (cargo tanks, having a capacity of 3,000 gallons or less, used exclusively for the transportation of flammable liquids need not be visually inspected and certain other cargo tanks must be pressure tested in addition to the visual inspection). However, tank car tanks must be hydrostatically retested and reinspected at periodic intervals, generally of either 1, 2, 3, 5, 10 or 20 years as prescribed in § 173.31(c).

Section 173.31(a) would be revised to allow the use of a single unit tank car tank that meets the DOT tank car tank specifications, except that it has one or more "thin spots" ' resulting from a tank repair, where the thickness of the tank is less than that prescribed in Part 179 of the HMR. However, the tank may not have scores, gouges, or other stress concentration areas, no thin spot could be greater than one-sixteenth of an inch less than the prescribed thickness, and no thin spot could be located on the lower half of the tank head. In addition, the total cumulative surface area of the thin spots could not exceed two square feet. The maximum safe total cumulative surface area depends on several factors, such as the size and shape of the thin spots, the location of the thin spots, the tank characteristics, and the lading properties. It is the judgment of RSPA and FRA that adoption of a two square foot restriction would pose no significant safety risk, even in a worst case combination of the above factors. Section 173.31(a) would also specify that ethylene oxide could not be transported in a tank with thin spots, unless the tank had a theoretical bursting pressure of 750 p.s.i.g. or greater. The Task Force Report concluded that ethylene oxide tanks with thin spots were vulnerable to failure because the use of gas padding increases the internal pressure.

It should be noted that the proposed revision of § 173.31(a) would not authorize the construction of tank car tanks with thin spots. The thin spot provisions only apply to thin spots that occur as a result of the authorized repair of a tank.

The Assocation of American Railroads' (AAR) Manual of Standards and Recommended Practices, Section C–Part III is incorporated by reference in § 171.7(d)(2) of the HMR. This manual implicitly requires that tank car owners report tank car tank thickness measurements on the Report of Welded Repair, Alterations or Conversions (Exhibit R–1 report) for areas affected during repairs, alterations or conversions. Section 173.31(f) of the HMR requires repairs, alterations and conversions to be made in accordance with Appendix R of the AAR's Manual of Standards and Recommended Practices, Section C–Part III. In spite of the requirement to take measurements, FRA found that after repairs were made to tank car tanks to correct improperly installed anti-shift brackets, the repair records (Exhibit R–1 reports) did not include the required thickness measurements. In a few cases, FRA determined that the repair facilities had not made the required measurements. Therefore, it is proposed to revise § 173.31(f) to clarify that after repairs, alterations or conversions, tank car tank thickness measurements must be included in the Exhibit R–1 report.

Administrative Notices

Paperwork Reduction Act

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Executive Order 12291

The RSPA has determined that this rulemaking (1) is not "major " under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedurs [44 FR 11034]; (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. et seq.). A regulatory evaluation is available for review in the Docket.

Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of the review of comments received in response to this proposal.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, packaging and containers.

In consideration of the foregoing, 49 CFR Part 173 would be amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, and 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 173.31, the beginning of the first sentence in paragraph (a)(1) would be revised; paragraph (a)(11) would be added and paragraph (f)(1) would be revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(1) Except as otherwise provided in paragraphs (a)(2) and (a)(11) of this section, * * *.

* * * * *

(11) A single unit tank car tank that meets the applicable specifications of Part 179 of this subchapter, except that it has one or more localized areas ("thin spots"), resulting from a tank repair, where the thickness of the tank car tank is less than that prescribed in Part 179 of this subchapter, may continue in use provided that—

(i) The difference between the required minimum thickness of the tank car tank and the actual minimum thickness of the tank car tank does not exceed one-sixteenth of an inch;

(ii) The total cumulative surface area of the think spots on each tank car tank does not exceed two square feet;

(iii) If the tank car tank is used to transport ethylene oxide, then the bursting pressure (see § 179.100–5 of this subchapter) of the tank must be at least 750 p.s.i.g.;

(iv) There are no thin spots on the lower half of any tank car tank head; and

(v) The tank car tank does not have any scores, gouges, or other areas of stress concentration.

* * * * *

(f) *Repairs or alterations.* (1) For procedure to be followed in making repairs or alterations to all tank car tanks and securing approval therefor, see Appendix R, Association of American Railroads Specifications for Tank Cars. After repairs, alterations, or conversions of a tank car tank that result in a possible change in the tank thickness at any point, the thickness of the tank car tank shall be measured in the affected area and shall be included on Exhibit R-1 of Appendix R.

* * * * *

Issued in Washington, DC on December 2, 1987 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87-28116 Filed 12-7-87; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 52, No. 235
Tuesday, December 8, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Hard Red Spring Wheat; Protein Equipment Calibration

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Beginning December 14, 1987, the Federal Grain Inspection Service (FGIS) will implement a new calibration for near infrared reflectance instruments for Hard Red Spring wheat protein determinations.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., USDA/FGIS/ Resources Management Division/IRS, Room 1661-S, P.O. Box 96454; Washington, DC 20090-6454; telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: A new Hard Red Spring (HRS) calibration for near infrared reflectance (NIR) instruments will be implemented for protein determinations. The calibration was developed with the assistance of the USDA Agricultural Research Service Instrumentation Research Laboratory and the Agricultural Marketing Service Statistics Branch. Some of the National Standard Reference Samples will be replaced and new NIR values issued for the entire set of 10 samples. The samples are used to detect instrument drift and therefore keep the NIR's aligned with the Kjeldahl laboratory at the FGIS Technical Center in Kansas City.

Beginning Monday, December 14, 1987, the new calibration will be implemented in FGIS field offices and the official agencies in their circuits in the following sequence:

1. Grand Forks, ND; Duluth and Minneapolis, MN.
2. Olympia, WA; Moscow, ID.
3. Wichita, KS; Portland, OR; Lutcher, LA.
4. Omaha, NE; Kansas City and St. Louis, MO.
5. Pasadena and Beaumont, TX; Belle Chasse and Destrehan, LA.

A technical review of the new calibration indicates that the effect on the national system should be minimal. However, the precise impact of the new calibration at any given location cannot be accurately predicted.

To ensure that the HRS calibration reflects the new varieties being grown by producers and is therefore as precise as possible, FGIS plans to update the calibration annually using a three year rollover of data.

Supporting documentation consisting of over 300 pages of data is available by contacting Lewis Lebakken, Jr. as shown above.

Dated: December 3, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87-28065 Filed 12-7-87; 8:45 am]
BILLING CODE 3410-EN-M

Forest Service

Transmittal to Congress; Columbia River Gorge National Scenic Area, White Salmon and Klickitat Wild and Scenic River Corridor Boundaries, Klickitat County, WA

The Columbia River Gorge National Scenic Area Act of November 17, 1986, designated the lower White Salmon River, Washington, as a National Scenic River and the Lower Klickitat River, Washington, as a National Recreation River, both to be administered by the Secretary of Agriculture. A previous notice in the **Federal Register**, dated November 9, 1987, announced that the USDA Forest Service had delineated river corridor boundaries for the White Salmon and the Klickitat Rivers as required by the Wild and Scenic Rivers Act, as amended.

The establishment of final boundaries began with an in-depth public involvement period including public meetings, field trips on-site, a draft map and questionnaire mailing, and a public question and answer session. From this public involvement, eight criteria were developed to assess lands adjacent to the rivers for inclusion within the corridor boundaries. Final boundaries were determined using these criteria.

The decision on boundary locations is subject to a forty-five day administrative review period, following the procedures under 36 CFR 211.18. Unless changed during the appeal process, the White Salmon and Klickitat wild and scenic river corridor boundaries will be implemented ninety days after Congress receives this transmittal.

River boundaries have been prepared and are available for review at the following offices: USDA Forest Service, Recreation, South Building, 12th and Independence Avenues SW., Washington, DC 20250; Pacific Northwest Regional Office, 319 S.W. Pine, Portland, OR 97208; Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Suite 200, Hood River, Orgeon 97031; Gifford Pinchot National Forest, 500 W. 12th Street, Vancouver, Washington 98660; and the Mt. Adams Ranger District, Trout Lake, Washington 98650.

Additional information may be obtained by contacting Katherine Jesch, Scenic Area Planner, 902 Wasco Avenue, Hood River, Oregon 97031, telephone (503) 386-2333.

Arthur W. DuFault,

National Scenic Area Manager.

[FR Doc. 87-28097 Filed 12-7-87; 8:45 am]
BILLING CODE 3410-11-M

Amendments to the Caribbean National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Final EIS on the Caribbean National Forest Land and Resource Management Plan filed in February 1986. The supplement will address changes in the Management Plan to eliminate commercial timber harvesting. The effects of this change on other resources and programs including wildlife, soil and water, native vegetation and recreation will be analyzed by an interdisciplinary team. Other significant issues that surface during the scoping process will also be addressed. Issues already identified include the number of acres to recommend for wilderness

designation, a proposal to construct the Sonadora Road, and levels of timber research and timber management demonstration activities. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision. The management direction given in the plan will continue to be in effect during preparation of the Supplemental EIS in all aspects, except that the following activities will not be done: commercial timber harvest, demonstration timber harvest, and road and trail construction.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Bernie Rios, Forest Supervisor, Caribbean National Forest, Call Box 25000, Rio Piedras, Puerto Rico 00928–2500.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Bernie Rios, Forest Supervisor, Caribbean National Forest, Call Box 25000, Rio Piedras, Puerto Rico 00928–2500, phone 809–763–3939.

SUPPLEMENTARY INFORMATION: Scoping began in early 1987 with issue analysis and a public meeting in March to review the process to be used and better identify the issues. Subsequent public participation activities have included meetings, field trips, requests for written comments, and a public meeting in November 1987 to review tentative findings of effects of alternatives. Alternatives have been formulated to address issues already identified and to analyze environmental consequences. Alternatives have been formulated which consider a range of levels of timber management demonstration harvest (up to 260 acres), manipulative research (on up to 200 acres), wilderness study (up to 23,600 acres), and the further analysis of the Sonadora Road construction proposal. The Draft Supplement to the Final Environmental Impact Statement for the Caribbean National Forest Land and Resource Management Plan is expected to be filed with the Environmental Protection Agency (EPA) and be made available for public review by June 1988. At that time the EPA will publish a notice of availability of the DSEIS in the **Federal Register**. The comment period on this draft Supplemental Environmental Impact Statement (DSEIS) will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the amendments to the Caribbean National Forest Land and Resource Management Plan participate at that time. Comments on the draft SEIS should be as specific as possible and may address the adequacy of the statement and the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.2 and 1503.3). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final SEIS. In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful, and alert an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

After the comment period ends on the draft SEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final SEIS is scheduled to be completed by December 1988. In the final SEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the SEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

The responsible official is John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia, 30367.

Date: November 30, 1987.

John E. Alcock,

Regional Forester.

[FR Doc. 87–28057 Filed 12–7–87; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

L.J. Bell and Monroe Avenue Schools RC&D Measure, NC; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the L.J. Bell and Monroe Avenue Critical Area Treatment, RC&D Measure, Richmond County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Bobbye J. Jones, State Conservationist, Soil Conservation Service, Room 544, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27611, Telephone (919) 856–4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment on two school grounds. The planned works of improvement include installing catch basins, pipes, diversions and grading and shaping to dispose of surface water at a nonerosive velocity. All disturbed areas sill be seeded with adapted permanent vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Bobbye J. Jones, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernment consultation with State and local officials.)

Date: November 25, 1987.

Cecil W. Settle,

Deputy State Conservationist.

[FR Doc. 87-28092 Filed 12-7-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of May 1, 1988 to April 30, 1989. The MBDC will operate in the Stockton Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-88009-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and State governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, December 23, 1987 at 10:00 a.m.

Proposals are to be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is January 13, 1988. Applications must be postmarked by midnight, January 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Xavier Mena,

Regional Director, San Francisco Regional Office.

December 2, 1987.

[FR Doc. 87-28075 Filed 12-7-87; 8:45 am]

BILLING CODE 3510-21-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** the proposals of the Chicago Board of Trade ("CBT") for designation as futures contract markets in the CBOE (Chicago Board Options Exchange) 250 Stock Index and the CBOE 50 Stock Index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted for both contracts.

DATE: Comments must be received on or before January 7, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Reference should be made to the CBT CBOE 250 Stock Index futures contract or the CBT CBOE 50 Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: On August 17, 1987, the Commission published in the **Federal Register,** for a 60-day comment period, a notice of availability of the CBT's proposed terms and conditions for the CBOE 250 Stock Index futures contract (52 FR 30712). On September 4, 1987, the Commission published in the **Federal Register,** also for a 60-day comment period, a notice of availability of the terms and conditions of the proposed CBOE 50 Stock Index futures contract (52 FR 33615). In a November 27, 1987, letter to the Commission, the CBT requested that the statutory review period specified in Section 6 of the Commodity Exchange Act be stayed in order "to provide the Exchange the opportunity to consider whether it wishes to submit modifications to these contracts or to the analyses supporting these contracts," and noted that this request may require "further publication in the **Federal Register.**" Accordingly, the Director of the Division has determined that, for the proposed contracts, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contracts will be

available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on December 2, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-28066 Filed 12-7-87; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange; Proposed Amendments Relating to the Gold Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has proposed major rule amendments for the gold futures contract. The primary purpose of the amendments being proposed is to establish London, England, rather than New York City and Wilmington, DE, as the delivery point for the contract.

In accordance with section 5a(12) of the Commodity Exchange Act ("Act") and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before January 7, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CME gold futures contract.

FOR FURTHER INFORMATION CONTACT: Joseph B. Storer, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The Chicago Mercantile Exchange is proposing to amend its gold futures contract. The purpose of the proposal is to change the delivery points on the contract from New York City and Wilmington, DE, to London, England. The Exchange believes that a gold futures contract with London delivery would provide for superior hedging and price basing because London is the principal center of gold trading worldwide as well as the price basing point for many gold transactions.

In conjunction with the proposed change in delivery points, the proposal also would substantively modify the delivery procedures and payment provisions of the contract. The CME's proposed amendments would define deliverable gold as gold meeting the specifications of a "good delivery bar" on the London Gold Market at the time of delivery. Delivery will be made by the seller by crediting to the account specified by the buyer 100 fine troy ounces of gold at an Exchange-approved "London Gold Depository." (The contract size would continue to be 100 troy ounces). Payment will be made by the buyer in same-day funds deposited to the CME's "Dollar Delivery Account" at an Exchange-approved bank. The Exchange has submitted for Commission approval a list of Exchange-approved London Gold Depositories and an Exchange-approved bank handling CME deliveries and payments. The proposed amendments also include other changes regarding the obligations of traders effecting delivery to facilitate futures delivery of gold at the London delivery point.

The Commission is seeking comment on the CME's proposed amendments.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on December 4, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-28256 Filed 12-7-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee; Publication of Changes

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 142. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 142 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* December 1, 1987.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins

published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 142 to the Heads of the Executive Departments and Establishments

Subject: Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 141 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$ 25
Anaktuvuk Pass	140
Anchorage	125
Atqasuk	215
Barrow	150
Bethel	124
Bettles	110
Cold Bay	120
Coldfoot	122
College	105
Cordova	118
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	105
Elmendorf	125
Fairbanks	105
Ft. Richardson	125
Ft. Wainwright	105
Homer	115
Juneau	109
Katmai National Park	148
Kenai	104
Ketchikan	105
King Salmon [3]	134
Kodiak	118
Kotzebue [3]	136
Kuparuk Oilfield	127
Murphy Dome [3]	105
Noatak	136
Nome	129
Noorvik	136
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	113
St. Paul Island	115
Sand Point	103
Shemya AFB [3]	30
Shungnak	136
Sitka-Mt. Edgecombe	110
Skagway	113
Spruce Cape	118
St. Mary's	100
Tanana	129
Umiat	160
Unakakleet	105
Valdez	147
Wainwright	165
Walker Lake	136
Wrangell	113
Yakutat	110
All other localities [3,4]	91
American Samoa	81
Guam M. I.	96
Hawaii:	
Hawaii, Island of:	
Hilo	66
Other	88
Kauai, Island of:	
12-20—3-31	127
4-1—12-19	91
Oahu, Island of	102
All other islands	88
Johnston Atoll [2]	23
Midway Islands [1]	13
Northern Mariana Islands:	
Rota	76
Saipan	92
Tinian	68
All other islands	20
Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (Including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (Including GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—12-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107
San Juan (including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All other localities	107
* Virgin Islands of U.S.:	
12-1—4-30	180
5-1—11-30	144
Wake Island [2]	20
All other localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 2, 1987.

[FR Doc. 87-28090 Filed 12-7-87; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for Shoreline and Barrier Island Restoration Throughout Much of Coastal Louisiana

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft PEIS.

SUMMARY:

1. Proposed Action

The project purpose is to address generic impacts associated with shoreline and barrier island restoration throughout much of coastal Louisiana. Accompanying the DPEIS will be three appendixes, which will be site-specific Environmental Impact Evaluation. One appendix will deal with the region from Grand Terre to Shell Island (Jefferson and Plaquemines Parishes), where the U.S. Army Corps of Engineers is conducting a feasibility study. Two other appendixes will discuss the impacts of anticipated work proposed by the State of Louisiana for Shell Island, Plaquemines Parish, and for the Isles Dernieres, Terrebonne Parish.

The coastal barrier islands of Louisiana provide beaches for recreational and commercial endeavors. They also serve as storm buffers, retard saltwater intrusion, and create estuaries. Unfortunately, Louisiana's 810 miles of gulf shoreline are eroding, with as much as 58 feet being lost each year. The coastal marshes behind the barrier islands are deteriorating and changing to open water at a rate of about 39 square miles per year. Reducing shoreline erosion and restoring barrier islands would slow the loss of fish and wildlife habitat and resources, reduce hurricane-induced storm damage, stabilizing the economy of coastal communities, and preserve the unique cultural and historical heritage of southern Louisiana.

The actual task of barrier island restoration spans numerous state and Federal agencies, public and private interest groups, geographic regions, and political boundaries. Compliance with both the Coastal Barrier Resources Act (Pub. L. 97–348) and Louisiana Coastal Use Guidelines is required of all projects. Passage of the Water Resources Development Act of 1986 (Pub. L. 99–662) with its specific cost-sharing requirements, has resulted in a critical evaluation of restoration projects.

In 1984, an Initial Evaluation Study was conducted by the U.S. Army Corps of Engineers to determine the erosion-related problems in the Louisiana coastal area, to investigate a broad range of measures to reduce the erosion process, and to determine whether further Federal involvement was justified.

Based on Federal and state concerns and priorities, six general Louisiana coastal areas will be discussed in the DPEIS: Johnsons Bayou to Calcasieu (Cameron Parish), Point Au Fer to Bayou Grand Caillou (Terrebonne Parish), Isles Dernieres (Terrebonne Parish), Timbalier Islands (Terrebonne Parish), Fourchon to Caminada Pass (Jefferson and Lafourche Parishes), and Barataria Pass to Empire-Gulf Waterway (Plaquemines Parish).

The DPEIS will provide broad coverage of the impacts associated with the various alternatives for shoreline and barrier island restoration. It will serve as a general reference for proposed site-specific actions and projects and facilitate the decision making process by helping focus on specific issues.

2. Alternatives

Individually or in combination, alternatives under consideration may include revetments, creative uses of dredged material, beach nourishment, construction of artificial sandbars, planting of vegetation, sand fencing, breakwaters, dune construction, dikes, closure of passes, terminal groins, and minimum beach berm width. All alternatives for the Grand Terre segment will contain a three-sided quarrystone dike at Fort Livingston at Barataria Pass.

3. Scoping Process

Public meetings for the original parent study conducted by the U.S. Army Corps of Engineers for coastal-erosion-related problems in the Coastal area were held in Jennings, Houma, and New Orleans, Louisiana, in 1968. Subsequent public meetings were conducted in Belle Chase, Houma, and Cameron, Louisiana in 1984. Numerous meetings have been held among representatives of Federal, state, and local agencies, groups, and individuals. Additional public meetings will be held when the DPEIS is completed in fall of 1988.

The public involvement program also includes a scoping letter to obtain input as to alternatives under consideration and significant resources to be evaluated in the DPEIS. The participation of affected Federal, state, and local agencies, as well as private organizations and parties, will be invited. A scoping input request for the Grand Terre to Shell Island portion of the Louisiana Coastal Areas, Shore and Barrier Islands Erosion Study, was mailed to interested parties on May 29, 1987.

b. Significant issues to be analyzed in the DPEIS include impacts of the proposed project on biological, cultural, historical, social, economic, water quality and human resources.

c. The U.S. Fish and Wildlife Service will provide a Coordination Act Report for the DPEIS for the Grand Terre to Shell Island segment.

d. The DPEIS will be coordinated with all required Federal, state and local agencies, environmental groups, landowner groups, and interested groups. All review comments received will be considered and responses will be made.

4. Public Meetings

Public meetings for the original parent study conducted by the U.S. Army Corps of Engineers for Coastal-erosion-related problems in the coastal area were held in Jennings, Houma, and New Orleans, Louisiana, in 1968. Subsequent public meetings were conducted in Belle Chase, Houma, and Cameron, Louisiana in 1984. Numerous meetings have been held among representatives of Federal, state and local agencies, groups, and individuals.

5. Availability

The draft PEIS and three site specific Environmental Impact Evaluations are scheduled to be available to the public in November 1988.

ADDRESS: Questions concerning the proposed action, the draft PEIS and Environmental Impact Evaluations may be directed to Ms. Diane E. Ashton, U.S. Corps of Engineers, Environmental Quality Section (CELMN–PD–RE), P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–1735).

Date: November 25, 1987.

Lloyd K. Brown,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–28062 Filed 12–7–87; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact; Fuel Processing Restoration Project, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (EA) on the proposed Fuel Processing Restoration (FPR) project at the Idaho Chemical Processing Plant (ICPP) at the Idaho National Engineering Laboratory (INEL). The FPR project includes two proposed actions: (1) To construct and operate a replacement facility, the Fuels Processing Facility (FPF), which will process recoverable irradiated naval and research reactor fuel and recover uranium for reuse in defense programs; and (2) to install and operate a new liquid low-level waste (LLW) treatment and disposal system to improve ICPP waste management practices. New facilities are needed because the existing ICPP facilities are not expected to be able to process anticipated increases in recoverable irradiated naval fuel receipts.

The EA examined and compared the environmental impacts of the proposed FPR project and reasonable alternatives. Based on the analyses in the EA the DOE issued a proposed finding of no significant impact (FONSI) on August 25, 1987, and distributed the EA and proposed FONSI for a 30-day public review period beginning on August 28, 1987. A summary of the comments and the DOE response is presented in the body of the FONSI and in the attachment to this notice. Only one of six letters submitted in response to the public review required a detailed technical response. Additional calculations performed in response to the reviewer's comments have reconfirmed the impact analysis as presented in the EA and, as such, the DOE concludes that no new information has been made available that would change the determination that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, (42 U.S.C. 4321 *et seq.*). Therefore, at this time the DOE is prepared to finalize the proposed FONSI.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, U.S. Department of Energy, Office of NEPA Project Assistance, 1000 Independence Ave. SW., Room 3E-080, Washington, DC 20585, (202) 586-4600.

Background

The Idaho Chemical Processing Plant (ICPP) is located in the south central portion of the 890-square mile Idaho National Engineering Laboratory (INEL) reservation, on the eastern Snake River Plain in southeastern Idaho. The ICPP began operation in 1951 to support the Atomic Energy Commission's (DOE's predecessor) reactor testing program. Today, the ICPP primarily supports naval reactor programs. As part of the nuclear fuel cycle, nuclear fuels produced under contract to DOE are utilized by naval reactors and research reactors. Recoverable irradiated reactor fuels are returned to the ICPP and revert to DOE control. These recoverable irradiated fuel cells are processed to produce solid uranium trioxide. This recovered uranium is recycled to other DOE facilities for final processing and utilization in fuel fabrication.

1. Processing Requirements

The primary mission of the ICPP is to process recoverable irradiated naval reactor fuels. Recent ICPP fuel-receiving projections show the facility's operating mission extending to at least the year 2030. The projections identify major increases in future fuel-processing requirements, with the facility's second 40-year (1990–2030) throughput expected to be up to four times greater than the throughput of the first 40 years (1950–1990). Detailed studies of the current ICPP maximum processing capacity indicate a capability less than 50% of future requirements, with the existing fuel storage basin capacity being exhausted by 1994, necessitating construction of additional storage basins if the FPF is not constructed.

In response to the increased fuel processing requirements, the Fuels Processing Facility (FPF) is proposed to replace the existing ICPP uranium recovery process (i.e., extraction and denitration) equipment that is housed in building 601 of the Chemical Processing Plant (CPP-601). The FPF processing would take place in sequence between the ICPP headend process (Fluorine Dissolution Process and Fuel Storage Facility (FAST)), and the waste management activities provided by the recently commissioned New Waste Calcining Facility (NWCF).

In addition to timely processing of recoverable irradiated reactor fuels, the FPF would also facilitate a higher rate of recycle of uranium-235 to DOE's production reactors. The needed uranium, if not provided by reprocessing at the ICPP, must be derived from alternative sources, such as mining and milling, or reprocessing elsewhere. The ICPP is the only facility in the U.S. currently capable of reprocessing highly enriched uranium fuels.

Another factor that could limit the ability of the ICPP to fulfill its future mission requirement centers on design codes, standards and safety design philosophy. Because safety design philosophy has changed significantly since the CPP-601 facility was constructed in the 1950s, the environmental, security, and radiological safety features of the CPP-601 facility would need extensive upgrading in order to support the future mission requirements. The FPF would be constructed and operated in compliance with all updated applicable codes and standards.

II. Effluent Treatment Upgrades

Another major factor that could limit the ability of the ICPP to fulfill its future mission requirements centers on the current liquid effluent treatment and disposal practices. Depending on the facilities in operation, the ICPP liquid waste comprises 1 to 2 million-gallons/day (gal/day) of service waste, which is a combination of many liquid streams resulting from the process of fuel recovery. Until February 1984, this service waste containing trace quantities of radionuclides and heavy metals was discharged to the Snake River Plain aquifer via the ICPP injection well. The State of Idaho objected to the injection practice. The DOE and the State have agreed to the use of a percolation pond as an interim service waste disposal method. One of the streams that is combined in the service waste is the process equipment waste (PEW) evaporator condensate (referred to as low-level waste (LLW) in the FPR EA). This LLW stream is the only contributor of radioactivity and periodically contains hazardous levels of mercury and acidity. A proposed long-term solution for LLW management is to separate the LLW from the service waste, reduce the volume by recycling, reduce contaminants through other process improvements and treatment, and evaporate the treated effluent.

Releases to the percolation pond from the existing service waste system are within the DOE limits for discharge to uncontrolled areas. Although drinking water regulations do not currently apply to percolation ponds, they may become applicable in the future because of increasing concerns for protection of groundwater. If these regulations become applicable, continued use of the existing ICPP facilities at anticipated increases in future fuel processing rates could result in LLW discharges that exceed the regulatory limits. Therefore, LLW treatment system modifications are prudent to ensure that the ICPP liquid waste will meet possible future, more restrictive regulations.

III. Proposed Finding of No Significant Impact

On August 25, 1987, DOE approved an Environmental Assessment (DOE/EA–0306) that analyzed the potential impacts associated with the FPR proposed action and reasonable alternatives. Concurrently, DOE issued a proposed finding of no significant impact (FONSI) for a 30-day public review period. The EA and proposed FONSI were distributed on August 28, 1987, and the comment period extended through September 28, 1987. The EA and proposed FONSI were distributed to 159 individuals and organizations at the start of the review period. During the review period the two documents were provided to an additional eleven organizations who requested the documents.

As a result of the public review, six letters were received, only one of which required a detailed technical response. The reviewer primarily questioned the adequacy of the treatment of offsite radiological impacts in light of the increased throughput that the FPR proposed action would facilitate. In response to the comment, an additional set of offsite radiological impacts was calculated for the preferred alternative for a scenario that is judged to represent the worst reasonably foreseeable conditions. The results are summarized in the Environmental Considerations section of the FONSI and presented in detail in the attachment to this notice along with a summary of the remaining comments and DOE responses. The impacts were shown to be essentially the same as those presented in the EA. Therefore, none of the comments presented information that would change DOE's initial determination that the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, DOE is prepared, at this time, to finalize the proposed FONSI.

Proposed Action

The proposed action would provide for new uranium extraction and LLW treatment systems to operate in conjunction with FAST, NWCF, and other existing ICPP facilities. Two actions are proposed as part of the FPR project. The first is to construct and operate a new facility at the ICPP, to be called the Fuels Processing Facility (FPF), which would house most of the uranium recovery activities currently performed in CPP–601. The FPF would begin operation in 1995 and extend through approximately 2030.

The second action is to install improved LLW treatment and disposal systems at the ICPP to reduce waste volumes. The purposes of the proposed FPR project are to: (a) Fulfill the ICPP mission of processing increased throughput requirements in the most economical manner; (b) reduce environmental releases, criticality risks, and radiation exposure per unit of uranium throughput; and (c) improve security and radiological safety systems.

I. Fuels Processing Facility

The proposed FPF would be constructed within the ICPP complex in a fully-developed industrial area. The building would be approximately 66 meters by 76 meters, with five levels: Three below grade and two above.

The FPF would enable the ICPP to meet future reactor uranium fuel processing requirements by increasing its processing capacity from as much as 1030 kg U–235/yr to as much as 3200 kg U–235/yr. In addition, the improvements would (a) reduce personnel radiation exposures to as low as reasonably achievable (ALARA) levels; (b) provide physical, rather than administrative, methods of criticality control; (c) administer better cleanup and control of effluent releases; (d) improve security and product accountability measures; and (e) upgrade structures, systems, and equipment to meet applicable standards, codes, and safety criteria to protect against destructive natural phenomena.

The FPF would perform all solvent extraction and product denitration functions currently performed in the CPP–601 facility. Specifically, the FPF would: (1) Receive dissolver product solutions from FAST; (2) process the dissolver product solutions through three cycles of solvent extraction and product denitration to produce purified solid uranium trioxide (UO_3); (3) temporarily store the solid UO_3 product; (4) recover and clean solvent for recycle or disposal; (5) receive and store process chemicals; (6) control and monitor all radioactive liquid waste streams; and (7) provide for the collection, packaging, interim storage, and handling of radioactive solid wastes.

II. Low Level Waste Treatment

The proposed LLW Treatment and Disposal System would either be located in an existing facility or a new facility for which construction will be required. The location of a new facility would most likely be southeast of building CPP–604, with some of the equipment being housed in that building.

Under the proposed action, the nonhazardous, nonradioactive portion of the service waste (1 to 2 million gal/day) would continue to be disposed of via a percolation pond. The LLW stream would be removed from the service waste stream for treatment and would either be recycled to the extraction processes, i.e. FPF, or disposed of by an evaporation process.

The treatment system, as currently conceived, would consist of an acid fractionation process, followed by evaporation and filtration with high efficiency particulate air (HEPA) filters prior to discharge. This treatment system would remove most of the heavy metals and radionuclides and reduce the acidity of the LLW system. Two parallel treatment systems would be installed to ensure process reliability.

Contaminants removed during treatment would be combined with PEW evaporator bottoms (from the existing process) and would be routed along with high-level waste (HLW) generated by the FPF process to the HLW tank farm and, subsequently, to the New Waste Calcining Facility. The aqueous HLW streams would contain most of the fission products from the dissolved fuel, and would be routed, as an interim processing step, to existing stainless steel tanks contained in below-grade reinforced concrete vaults. The liquid HLW would be calcined (solidified into granular solids) in the NWCF. The calcined solids would then be stored in stainless steel bins enclosed in reinforced concrete vaults at the INEL site, as is currently practiced.

Alternatives Considered

Several alternatives to the proposed FPF and LLW systems were studied. The three FPF alternatives considered were: (1) No action; (2) complete renovation of the CPP–601 facility and processes; and (3) limited construction of new first-cycle extraction facilities to be used in conjunction with upgraded downstream systems. The four LLW system alternatives considered consisted of: (1) No action, which examined the possibility of continued use of the existing U–235 extraction process in tandem with the existing liquid LLW treatment and disposal system; (2) evaluation of the existing LLW system in conjunction with the proposed FPF; (3) implementation of the proposed LLW system with the exception that all of the treated liquids would be disposed of in the percolation pond; and (4) implementation of the proposed LLW system with the treated liquid waste to be disposed of in a solar pond.

Environmental Considerations

The potential environmental effects were evaluated in the EA for the proposed actions and alternatives. The EA analyzed the effects from the

proposed new facilities as well as the cumulative effects resulting from operations of the proposed new facilities and all other ICPP facilities. No significant environmental impacts associated with the proposed FPR project are anticipated. This finding of no significant impact for the proposed action is based on the following factors, which are supported by the information and analyses in the EA and in the response to comments received during the public review.

I. Relative Comparison of Environmental Impacts

The potential environmental impacts from the alternative actions were evaluated in the EA and compared to the environmental effects projected for the proposed action. In summary, FPF Alternatives 2 and 3 would satisfy the projected ICPP mission requirements, while Alternative 1 would fall short of projected demands. Since the FPF proposed action and Alternatives 2 and 3 process larger volumes of material, the estimated environmental impacts of those options are slightly greater than those for Alternative 1. However, the impacts of all actions evaluated were found to be well within regulatory requirements. The proposed action would ensure the greatest safety to both workers and the public for the following reasons:

- Improved criticality control;
- Product accountability measures; and
- Structure, systems, and equipment designed to meet natural phenomena standards.

The smallest environmental impacts associated with LLW management would be the LLW proposed action and LLW Alternative 4, although Alternative 4 would result in the accumulation of hazardous sludges. More importantly, the LLW proposed action would completely eliminate potentially adverse effects on the aquifer, while LLW Alternatives 1, 2, and 3 would result in discharges of trace quantities of heavy metals to percolation ponds; thus, these options could result in groundwater contamination. The following sections describe the environmental consequences of the proposed action.

II. Release of Radioactivity

Potential radiological impacts were analyzed for both routine operations and abnormal events (e.g., fire and tornado). Radiological effects are estimated by projecting radiation dose commitments to ICPP workers, maximum individual members of the general public and the population living in the study area and by estimating health effects (latent cancer deaths) to exposed populations.

A. Routine Operations

The maximum individual effective dose equivalent (EDE) (5.0×10^{-7} rem) for the proposed action from one year of FPF operation would be 0.002% of the annual EPA standard for the airborne pathway (0.025 rem). The maximum individual EDE from one year of operation of the proposed LLW treatment and disposal system would be 4.2×10^{-6} rem which is approximately 0.02% of the standard.

In response to a review comment regarding the cumulative ICPP radiological emissions, calculations were performed to assess the difference in offsite impacts between operating the ICPP FAST facility with or without an antimony-125 (Sb–125) removal system. Although DOE plans to install an Sb–125 removal system prior to operating the FPR facility, and the analyses in the EA reflect the projected impacts under these conditions, the reviewer questioned the magnitude of the offsite impacts without the Sb–125 removal system in operation. The maximum individual EDE from total ICPP airborne emissions would be 5.5×10^{-4} rem without Sb–125 removal and 3.0×10^{-4} rem with removal (see attachment). These exposures represent 2% and 1% of the standard, respectively. The population cumulative dose from all ICPP operations assuming Sb–125 removal (1.4 man-rem) would be indistinguishable from the effects of background radiation (43,500 man-rem).

The maximum number of health effects estimated to occur to the exposed population from routine releases of the FPF proposed action would be 1.3×10^{-6} per year. The maximum number of health effects projected to occur due to routine releases from the LLW proposed action would be 3.9×10^{-5} per year. For comparison, 3 to 10 health effects per year are estimated to occur to the exposed population due to background radiation.

One of the main objectives of the FPF project would be to reduce occupational exposure during reprocessing. To achieve this objective, the FPF would increase shielding and include more remote operational capabilities. As an operational practice, all radiation worker doses would be kept as low as reasonably achievable (ALARA) through the training of radiation workers in the proper use of equipment and protective clothing, and through sufficient planning of employee's job procedures. The facility would also be designed to reduce the total worker radiation dose to below one-fifth (1 rem/yr) the DOE occupational exposure limit of 5 rem/yr, established by DOE Order 5480.1B, Chapter 11.

B. Abnormal Events

Radiological effects caused by abnormal events were also estimated for the FPF and LLW proposed actions, and it was determined that these effects would be very small and would not be detectable in the exposed population. For the FPF, the greatest number of health effects (0.10) would result from the design basis tornado, having winds in excess of 175 mph. The design basis tornado was also estimated to cause the greatest number of health effects resulting from damage to the LLW system, 1.7×10^{-6}. The event with the highest probability of occurrence (7.7×10^{-3}/yr) is a fire with HEPA filter failure, wherein, the first of three stages of HEPA filters is damaged but the separate, downstream second and third stages remain intact. The health effects caused by such an occurrence would also be very small (3.0×10^{-4} for FPF and 2.0×10^{-7} for the LLW), and would not be detectable in the exposed population.

All FPF and LLW gaseous effluents would be monitored by stack monitors which would continuously measure gaseous and particulate radioactivity. HEPA filters would be monitored to ensure maintenance of filter integrity. Alarms would be provided to alert operators of off-normal conditions in the heating, ventilation and air-conditioning systems, and technical specifications/standards, Quality Assurance requirements and operating procedures would be established for administrative control.

III. Air Quality

Air quality would not be significantly affected by the proposed action. The principal sources of nonradioactive emissions (NO_x and SO_2) at the ICPP are the FPF, the NWCF, and the Coal-Fired Steam Generation Facility (CFSGF). (The CFSGF produces process steam for ICPP facilities and is the dominant current and projected source of SO_2 emissions. The CFSGF SO_2 releases are not expected to increase with increased throughput at the ICPP). Calculated increases of concentrations of NO_x and SO_2 at the site boundary would be factors of 10^2 to 10^3 below applicable air quality standards for NO_x and SO_2, respectively.

However, operation of the FPF would result in annual net emission increases of NO_x from the ICPP due to the higher processing rate at the NWCF. Although the increases would be well within the State of Idaho's regulatory requirements,

the increases would be significant as defined by the State of Idaho for purposes of air permitting. Therefore, a construction permit from the State of Idaho has been requested and an operating permit may also be required at the State's discretion. (The DOE has recently initiated a research and development program to remove NO_x from the ICPP main stack. A bench-scale technology demonstration unit will be installed in fiscal year 1988.)

IV. Water Quality

There would be minimal potential for degradation of water quality at the INEL from the FPF proposed action. There are no permanent surface waters at the INEL. All surface waters entering the INEL site evaporate or infiltrate and recharge the Snake River Plain aquifer, which flows through fractured and porous basalt about 450 ft beneath the surface at the ICPP.

Waste handling systems within the FPF would process liquid wastes to minimize discharge of radioactive and toxic materials to the environment. A gamma monitoring and diversion system would prevent discharge of radioactivity in excess of release limits. The nonradioactive, nonhazardous service wastes would be monitored to ensure pollutant concentrations are below applicable release limits before being discharged to an existing percolation pond. No significant environmental impacts associated with liquid wastes are anticipated.

Increased throughput at the ICPP would require additional water which would be pumped from the Snake River Plain aquifer. Pumping would have a very limited and localized effect on annual water-level changes in the aquifer in the vicinity of the ICPP because the amount which would be pumped is a small portion of the total storage and recharge.

V. Solid Waste

Solid waste generated as a result of the FPR project would be segregated into radioactive and nonradioactive components. Nonradioactive nonhazardous solid waste would be disposed of at an existing INEL sanitary landfill. Radioactive solid waste would be disposed of according to the type of radioactive contamination. Low-level radioactive waste would be disposed of in an existing shallow-land burial site at the Radioactive Waste Management Complex (RWMC) at the INEL. Solid waste contaminated with transuranic (TRU) radionuclides would be stored at the RWMC during an interim period until shipped for offsite disposal. Radioactive hazardous (mixed) waste would be stored at the INEL mixed waste storage facility pending evaluation of treatment/disposal options. Nonradioactive hazardous wastes would be packaged in accordance with Department of Transportation (DOT) regulations (49 CFR Parts 171, 172, and 173) and shipped to a permitted hazardous waste disposal facility.

Existing facilities at the INEL are adequate for handling solid waste generated by the proposed FPR project. Standard procedures are in place at INEL for safely carrying out waste handling activities. No significant impacts to the environment are projected from the result of handling solid wastes at the INEL.

VI. Seismicity

INEL is located in Seismic Zone 2, defined by the Uniform Building Code, October 1981, as an area where destructive earthquakes may occur. However, none of the events recorded to date have caused damage to ICPP facilities. Pipelines laid in concrete-lined trenches and other FPF facilities are designed to withstand the effects of a design basis earthquake (DBE) (0.24-g horizontal acceleration). Estimated potential environmental impacts due to DBE earthquakes on the proposed facilities are minimal, and no significant impacts would occur.

VII. Cultural and Biological Resources

The FPF facilities would occupy about 0.5 hectares (1 acre) of land inside the fences of the ICPP. Because the proposed site is presently in a highly developed area, no significant impacts on natural resources of the area are anticipated.

There are no significant cultural or biological resources at the FPR site. No known threatened or endangered species or critical habitat are likely to be affected by the project. No impacts to archaeological sites are anticipated as a result of FPR.

VIII. Floodplains and Wetlands

The proposed FPF location is about 0.5 miles from Big Lost River and is 11 ft above the river bed. An existing flood control system is designed to contain a flood in excess of one with an average return period of 300 years, and therefore, the proposed project would not impact the floodplain.

IX. Socioeconomic Resources

A small work force would be required for construction (120 workers) and operations (19 additional people); based on the availability of a local labor pool, socioeconomic effects associated with the FPR project are expected to be insignificant.

X. Soils

Clearing of the construction site would result in minimal soil erosion. The use of existing roads for access and the site location on previously disturbed ground would limit the erosion potential. Clearing of vegetation would be minimized and, after construction activities have concluded, the site will be upgraded and revegetated where feasible. If excavated soil is found to be radioactively contaminated above background levels, that soil will be disposed according to applicable DOE orders.

Determination

Based on the information and analyses in the EA and the response to comments received, the Department has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA, and therefore, the preparation of an environmental impact statement is not required.

Issued at Washington, DC, November 24, 1987.

Grover Smithwick,

Acting Assistant Secretary, Environment, Safety and Health.

Attachment

Summary of Comments Received on the Proposed FONSI

Comments were received from six reviewers on the proposed FONSI during the public review period. Of these, five reviewers had no substantive comments. Although the remaining response raised questions concerning the proposed action, no significant new information was presented which affected the Department of Energy's initial determination. Those comments requiring a technical response are summarized below along with the DOE responses.

Comment: It was noted that the major radiological and nonradiological impacts associated with the Idaho Chemical Processing Plant (ICPP) do not actually result from direct operation of the FPR facility, but rather from the associated headend and waste management processes, the Fluorinel Dissolution Process and Fuel Storage Facility (FAST) and the New Waste Calcining Facility (NWCF), respectively. The reviewer questioned the validity of the existing environmental documentation for these facilities in light of the increased throughput of

uranium-235 (U-235) that the FPR would facilitate. In particular, a concern was expressed regarding the treatment of offsite radiological impacts due to airborne release of antimony-125 (Sb-125) from FAST. They pointed out that the radiological effects of the proposed action are approximately nine percent of the critical organ dose standard and one percent of the whole body standard, as established by the Environmental Protection Agency in 40 CFR 61.

Response: As indicated in the EA, fuel receipts at the ICPP are expected to rise steadily over the next several years to a maximum projected throughput of as much as 2700 kg of U-235/yr in the time period between 2009 and 2030. The reviewers pointed out that this throughput is substantially higher than the current annual processing capacity of as much as 1030 kg U-235/yr and questioned whether the environmental impacts from this increased throughput were adequately addressed.

In order to encompass the maximum potential environmental impacts, the analyses presented in the FPR EA were actually based on an ICPP throughput of 3200 kg U-235/yr, a processing capacity that is somewhat greater than the currently projected maximum throughput.

Therefore, the analyses performed in support of the FPR EA was intended to update the corresponding analyses in existing NEPA documentation to provide an upper bound on cumulative impacts associated with all major ICPP facilities.

With respect to the impacts of Sb-125 emissions, releases from the FAST facility, as presented in the FPR EA, were based on projected emission rates presented in the FAST Final Safety Analysis Report (FSAR). However, when dissolution began in FAST (October, 1986), the releases of Sb-125 (as stibine gas), although insignificant, were greater than the anticipated quantities. The DOE is committed to reducing Sb-125 emissions to levels which are as low as reasonably achievable. Adjustments have already been made in the FAST dissolution procedures which reduced Sb-125 emissions by 25 percent. Several cleanup systems for removing Sb-125 from airborne effluent are being evaluated and DOF plans to install a system before the startup of the FPF. The first major turnaround for the FAST facility is scheduled for the summer of 1988, and it is anticipated that installation of an antimony removal system will be initiated at this time. This system will be designed to reduce Sb-125 emissions by at least an order of magnitude. Therefore, the current Sb-125 emissions represent a transient condition that will not exist when the FPF begins operations in 1995 and, as such, the increased emission rate of stibine gas was not included in the EA analysis.

However, in response to the comment, two cases were evaluated to determine the consequences of operating the FAST facility at the design capacity of up to 3200 kg U-235/yr. The first calculation assumes that an Sb-125 cleanup system is not installed and that releases are proportional to those associated with the 1987 throughput. The doses calculated for this case are considered by DOE to represent an upper bound on the radiological consequences from ICPP operations. The second calculation assumes that a cleanup system is installed which reduces Sb-125 emissions by a factor of 10. As previously mentioned, DOE plans are to achieve an emission reduction which is at least this large. The results of these calculations are shown in the following two tables.

MAXIMUM INDIVIDUAL EFFECTIVE DOSE EQUIVALENT (EDE) FROM ICPP AND INEL WITH AND WITHOUT AN Sb-125 REMOVAL SYSTEM

[Assumes ICPP Throughput of 3,200 kg U-235/year]

	Without Sb-125 removal system		With Sb-125 removal system	
	EDE (rem)	Percent of standard	EDE (rem)	Percent of standard
ICPP:				
SB-125	2.8E-04	1.1	2.8E-05	0.1
All other nuclides	2.7E-04	1.1	2.7E-04	1.1
ICPP total	5.5E-04	2.2	3.0E-04	1.2
INEL total	7.5E-04	3.0	5.0E-04	2.0
EPA airborne pathway standard (40 CFR 61)	2.5E-02		2.5E-02	

MAXIMUM INDIVIDUAL THYROID COMMITTED DOSE EQUIVALENT (CDE) FROM ICPP AND INEL WITH AND WITHOUT AN Sb-125 REMOVAL SYSTEM

[Assumes ICPP Throughput of 3,200 kg U-235/year]

	Without Sb-125 removal system		With Sb-125 removal system	
	CDE (rem)	Percent of standard	CDE (rem)	Percent of standard
ICPP:				
Sb-125	8.1E-04	1.1	8.1E-05	0.1
All other nuclides	6.4E-03	8.5	6.4E-03	8.5
ICPP total	7.2E-03	9.6	6.5E-03	8.6
INEL total	7.2E-03	9.6	6.5E-03	8.6
EPA airborne pathway standard (40 CFR 61)	7.5E-02		7.5E-02	

The tables show that the EDE to the maximum individual from ICPP operations would be about a factor of two greater than predicted in the EA if a cleanup system were not installed. The EDE to the maximum individual from all INEL operations would increase from 4.7E-04 rem/yr (refer to Table 4-17 in the FPR EA) to 7.5E-04 rem/yr. The CDE to the thyroid would increase from 6.4E-03 rem/yr (refer to Table 4-17 in the FPR EA) to 7.2E-03 rem/yr. Without a cleanup system, the INEL total EDE would represent 3.0% of the EPA airborne pathway standard, while the CDE to the thyroid would be 9.6% of the standard. DOE believes that these values represent the maximum possible impact of ICPP operations. With a cleanup system installed, the INEL total doses would represent only 2.0% of the whole body and 8.6% of the thyroid doses allowed by the EPA standard.

Comment: The increase in NO_x from NWCF due to greater throughput is "significant", as defined by the State of Idaho (>40 tons/yr).

Response: The significance level for NO_x defined by the State of Idaho is only significant in an administrative sense. No adverse health or environmental effects would be expected from the increase in NO_x from the NWCF as a result of higher throughput. However, as part of the FPR Prevention of Significant Deterioration (PSD) permitting requirements, work is proceeding on the development of Best Available Control Technology (BACT) for reduction of NO_x releases from the NWCF. The State has set a minimum design goal of 90 percent reduction. It is planned that this cleanup system will be operative by the time the FPF begins operation.

Comment: The effective dose equivalent (EDE) should be specifically defined for clarity to both technical and general public reviewers.

Response: The EDE is defined in Section C 6.1, p. C-33. Appendix C is called out in Paragraph 1 of Section 4.2.2.

Comment: The maximum dose will not always be received by an adult person, for example the milk pathway.

Response: The major radionuclides contributing to the maximum organ and individual EDE were evaluated to determine the effects of age distribution. Age specific dose conversion factors were obtained from NUREG-0172[a] and age specific consumption factors were taken from NRC Regulatory Guide 1.109.[b] In the case of I-129, the dose to

[a] G.R. Hoenes and S.K. Soldat. NUREG-0172, Age-Specific Radiation Dose Commitment Factors for a One-Year Chronic Intake. November 1977.

[b] U.S. Nuclear Regulatory Commission. Regulatory Guide 1.109, Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I. October 1977.

an infant's thyroid from the milk pathway is larger than to an adult. However, when contributions from all pathways are considered, the dose to the thyroid of an adult is larger than the dose to an infant's or child's thyroid. The difference among the adult, child and infant thyroid doses was less than a factor of two, so the dose to an adult's thyroid is considered to be a representative value for all age groups. The maximum individual EDE was also reviewed. Although the dose contribution of the various radionuclides varied somewhat, the EDE to a child or infant did not exceed the value reported in the document for adults.

Comment: It is not clear if the population of Idaho Falls is included in both the routine and accidental release evaluations.

Response: Section C 6.3.1, p. C–48, states that populations within 80 km (which includes Idaho Falls) are included in routine dose calculations. The section of the EA in question (4.2.2.2) states that Idaho Falls is included in accident calculations.

Comment: The narrative on radiological effects for routine releases states a total EDE of 1.3 E–3 rem; however, 1.3 E–5 rem is given in Table 4–7 and is the correct value.

Response: The comment is correct; there is an error in the text.

Comment: The heading "annual" (footnote a) in Table 4–7 and others is easily confused with the "first year dose" sometimes calculated by DOE. Page C–33 of this EA specifically states that all doses are 50–yr integrated dose commitments.

Footnote "a" on Table 4–14 is clearer and should be considered the correct interpretation.

Response: The comment is correct.

Comment: The ICPP Worker Dose (last column) in Table 4.7 and others is estimated as "none" for the construction phase. Due to the possibility of contaminated soil in and around ICPP much of which has not been characterized, an estimate of "none" is questionable.

Response: The area where FPR will be constructed has not been used in the past for any process-related activities. Health Physics surveys have revealed no contaminated soil and there is no reason to believe any significant radiation exposure would be incurred during construction.

Comment: The EDE attributed to the Test Reactor Area (TRA) in Table 4–17 (0.20 mrem) is greater than the INEL site total reported in the offsite annual monitoring reports for a number of years. This affects the discussions of this topic on page 4–46.

Response: The doses calculated in the offsite monitoring reports are whole body doses and cannot be directly compared to EDEs calculated in the FPR EA. In addition, until recently, the atmospheric dispersion for the monitoring report was calculated using the MESODIF model, whereas the AIRDOS model was used for the EA. It was therefore necessary to recalculate doses from TRA, using AIRDOS, so that the same comparative basis was used. The fact that the EA doses are so much greater than those in the monitoring reports further indicates that calculated doses in the EA are probably conservative. For these reasons, we believe the discussion on p. 4–46 is valid.

[FR Doc. 87–28094 Filed 12–7–87; 8:45 am]
BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[WH–006]

Energy Conservation Program for Consumer Products; Petition for Waiver of Water Heater Test Procedures From Aero Environmental Limited

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Aero Environmental Limited (Aero) of Toronto, Canada, requesting a waiver from the existing Department of Energy (DOE) test procedure for water heaters. Aero manufactures three models of oil fueled water heaters which have a high mass heat exchanger. The petition requests DOE to grant Aero relief from the DOE test procedure for its CF series water heaters, models CF–32T, CF–40S, and CF–50T, on the basis that the existing test procedure yields a lower efficiency for these high mass water heaters than a simulated use test method. DOE is soliciting comments, data, and information respecting the petition.

DATE: DOE will accept comments, data and information not later than January 7, 1988.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. WH–006, Mail Stop CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127;
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3266, and the National Appliance Energy Conservation Act of 1987, Pub. L. 100–12, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

Aero's petition seeks a waiver from the cold start recovery efficiency test in the existing test procedure for water hearters and requests an allowance to

test for recovery efficiency using a simulated use test method which has been granted Ford Products and Bock Water Heater Companies. 50 FR 50678, December 11, 1985, and 50 FR 47106, November 14, 1985. It should be pointed out that subsequent to these Federal Register notices, DOE modified the waivers granted to Bock and Ford Products. 51 FR 21975, June 17, 1986, and 51 FR 18659, May 21, 1986.

Aero contends that its high thermal mass water heaters, being similar in construction to Bock and Ford Products' oil-fired water heaters, will result in a higher recovery efficiency when tested under the simulated use test method. Aero requests the waiver because the existing test procedure places Aero "in an unfair position with Ford and Bock with regard to marketing information."

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, November 25, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Aero Environmental Limited,
37 Hanna Avenue, Toronto, Canada M6K 1X2,
Telephone (416) 535-1600,
Telex 06-217595.

October 7, 1987.

Department of Energy,
Office of Conservation & Renewable Energy, Mail Station CE-112, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.
Attention: Assistant Secretary, Conservation & Renewable Energy
Subject: Petition for Waiver of Water Heater Test Procedure

Gentlemen/Ladies: We are requesting a Petition for Waiver, 10 CFR 430.27 for our models CF-32T, CF-40S and CF-50T water heaters, from the Cold Start method for recovery efficiency to the Simulated Use Test procedure, in the same manner and reasoning as has been granted the Ford and Bock water heater companies. These waivers were granted in Volume 50, no. 220, November 14, 1985 of the Federal Register.

We also claim our 'CF' series water heaters to have a high thermal mass which, when tested under the simulated Use Test methods, will show higher results than existing procedures. As well, since the construction of our water heaters is similar to that of both the Bock and Ford centre flue design, we feel that our Petition is justified. We also must at this time compete in an unfair position with Ford and Bock with regard to marketing information.

We trust you will give us your favorable consideration to the above.

Yours truly,

Aero Environmental Limited.

M.F.C. Brooker,

Vice President.

[FR Doc. 87-28095 Filed 12-7-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and § 101-6.1015 of the Interim Rule on Advisory Committee Management, (41 CFR 101-6.1015) and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Health and Environmental Research Advisory Committee has been renewed for a 2-year period ending November 22, 1989. The Committee will continue to provide advice to the Secretary of Energy on the Health and Environmental Research (HER) program.

The renewal of the Health and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), and regulations and directives implementing those statutes.

Further information regarding this advisory committee can be obtained from Gloria Decker (202-586-8990).

Issued in Washington, DC on December 2, 1987.

Charles R. Tierney,

Advisory Committee Management Officer.

[FR Doc. 87-28096 Filed 12-7-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 10486-000 et al.]

Hydroelectric Applications, Uniontown Hydro Assoc. et al., Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10486-000.

c. *Date Filed:* September 29, 1987.

d. *Applicant:* Uniontown Hydro Associates.

e. *Name of Project:* Uniontown.

f. *Location:* Ohio River in Union County, Kentucky, and Posey County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael J. Graham, P.O. Box 1929, Lake Havasu City, AZ 86403, (602) 855-1615.

i. *FERC Contact:* Dean Wight, (202) 376-9821.

j. *Comment Date:* January 22, 1988.

k. *Description of Project:* The proposed project would use the existing Uniontown Locks and Dam, owned and operated by the U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, KY 40201, and would consist of: (1) A proposed intake-powerhouse 100 feet wide and 200 feet long; (2) four proposed turbine-generators of 64 MW combined capacity; (3) a proposed tailrace 200 feet long; (4) a proposed 25-kV underground transmission line 4,000 feet long; and (5) appurtenant facilities. The estimated annual energy production is 350 GWh. Project power would be sold. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $300,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Change of Land Rights.

b. *Project No.:* 1889-009.

c. *Date Filed:* August 31, 1987.

d. *Applicant:* Western Massachusetts Electric Company.

e. *Name of Project:* Turners Falls Project.

f. *Location:* On the Connecticut River in Franklin County, Massachusetts, Windham County, Vermont, and Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Contact Person:* R.A. Reckert, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141-0270, (203) 665-5000.

i. *FERC Contact:* Thomas O. Murphy (202) 376-9829.

j. *Comment Date:* January 13, 1988.

k. *Description of Project:* The applicant has requested approval to convey certain interests in real property within the project boundary to the United States Fish and Wildfish Service for construction of the Northeast Anadromous Fish Research Laboratory. The applicant proposes to convey to the United States of America approximately

20 acres of land in fee and grant easements affecting approximately 13.64 acres in Montague, Massachusetts. The easements will allow for: (1) Access to the research facility; (2) access to the power canal as a source of water and fish; (3) access to the fish ladder to trap fish; (4) development of parking areas associated with the research facility; (5) a pipeline for discharge into the Connecticut River; and (6) appurtenant facilities.

l. *This notice also consists of the following standard paragraphs:* B, C, & D2.

3 a. *Type of Application:* Surrender of License.

b. *Project No.:* 3435–005.

c. *Date Filed:* October 2, 1987.

d. *Applicant:* The City of Hope, Arkansas.

e. *Name of Project:* Gillham Hydroelectric Project.

f. *Location:* On the Cossatot River in Howard County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Mr. Zachary D. Wilson, Attorney at Law, 321 Maple, P.O. Box 5578, N. Little Rock, AR 72119, (501) 376–4090.

i. *FERC Contract:* Nanzo T. Coley (202) 376–9416.

j. *Comment Date:* January 14, 1988.

k. *Description of Proposed Surrender:* The proposed project would have consisted of: (1) A 112-foot-long, 10-foot-diameter steel penstock; (2) a reinforced concrete powerhouse containing one generating unit rated at 8,000-kW; (3) a 140-foot-long, 35-foot-wide tailrace; (4) a transmission system which includes the 4.16-kV generator leads, the 4.16/69–kV, 10-MVA step-up transformer, and the 4-mile-long 69-kV overhead transmission line; and (5) appurtenant facilities.

The applicant estimates the average annual energy output would have been 15,567,000 kWh. Energy produced at the project would have been sold to Hope Water and Light Commission's Consumers.

l. *This notice also consists of the following standard paragraphs:* B, C, & D2.

4 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6042–004.

c. *Date Filed:* September 23, 1987.

d. *Applicant:* Placer County Water Agency.

e. *Name of Project:* Secret Town Pipe Hydroelectric Project.

f. *Location:* On Lower Boardman Canal, near the town of Secret Town, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Mr. Edward J. Schnabel, General Manager Placer County Water Agency P.O. Box 6570 Auburn, CA 95604.

i. *FERC Contract:* Ahmad Mushtaq, (202) 376–1900.

j. *Comment Date:* January 14, 1988.

k. *Description of the Proposed Surrender:* The project would have utilized the existing Lower Boardman Canal and would have consisted of: (1) An intake structure at elevation 3,080 feet m.s.l.; (2) a 30-inch-diameter, 1,300-foot-long penstock; (3) a powerhouse containing two generating units with a total installed capacity of 184 kW; (4) a 1,300-foot-long transmission line interconnecting with an existing Pacific Gas and Electric Company transmission line; and (5) a 20-foot-long tailrace feeding into the Lower Boardman Canal system. The Licensee states that the project is not economically feasible at this time.

l. *This notice also consists of the following standard paragraphs:* B, C and D2.

5 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6047–004.

c. *Date Filed:* September 23, 1987.

d. *Applicant:* Placer County Water Agency.

e. *Name of Project:* Long Ravine Pipe Water Power Project.

f. *Location:* On Lower Boardman Canal, near the town of Shady Glen, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Mr. Edward J. Schnabel, General Manager Placer County Water Agency, P.O. Box 6570, Auburn, CA 95604.

i. *FERC Contract:* Ahmad Mushtaq, (202) 376–1900.

j. *Comment Date:* January 14, 1988.

k. *Description of the Proposed Surrender:* The project would have utilized the existing Lower Boardman Canal and would have consisted of: (1) An intake structure at elevation 2,579 feet m.s.1.; (2) a 24-inch-diameter, 400-foot-long penstock; (3) a powerhouse containing two generating units with a total installed capacity of 108 kW; (4) a 300-foot-long transmission line interconnecting with an existing Pacific Gas and Electric Company transmission line; and (5) a 20-foot-long tailraee feeding into the Lower Boardman Canal system. The Licensee states that the project is not economically feasible at this time.

l. *This notice also consists of the following standard paragraphs:* B, C and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10477–000.

c. *Date Filed:* September 21, 1987.

d. *Applicant:* Burke Dam Hydro Associates.

e. *Name of Project:* Burke Dam.

f. *Location: James River in Botetourt County, Virginia.*

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Granville J. Smith II, 3901 Northampton Street, NW., Washington, DC 20015, (202) 966–1409.

i. *FERC Contact:* Dean Wight, (202) 376–9821.

j. *Comment Date:* February 4, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A proposed gabion dam 287 feet long and 21 feet high; (2) a proposed impoundment of 145 acres surface area and 1,305 acre-feet storage capacity at a normal maximum surface elevation of 896 feet MSL; (3) a proposed concrete intake-powerhouse 40 feet wide and 92 feet long; (4) four proposed turbine-generators of 2 MW combined capacity; (5) a proposed 13.8–kV transmission line 2 miles long; and (6) appurtenant facilities. The net hydraulic head would be 16 feet. The estimated annual energy production is 11.6 GWh. Project power would be sold to Virginia Power. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $5,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10485–000.

c. *Date Filed:* September 22, 1987.

d. *Applicant:* Chandler Falls Hydro Partnership.

e. *Name of Project:* Chandler Falls Hydro Project.

f. *Location:* On the Tempe Canal in Maricopa County, Arizona: Section 9, T1N, R5E: G&SRB&M.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael J. Graham, P.O. Box 1929, Lake Havasu City, Arizona 86403.

i. *FERC Contact:* Jesse W. Short, (202) 376–9818.

j. *Comment Date: February 4, 1988.*

k. *Description of Project:* The proposed project would be located on the U.S. Bureau of Reclamation's Tempe Canal and would consist of: (1) An existing intake structure and penstock, 60 inches in diameter and 175 feet long; (2) a new powerhouse containing a turbine-generator unit rated at 750 kW under a head of 40 feet; (3) a tailrace returning flow to the canal; (4) a 500-foot-long transmission line; and (5)

appurtement facilities. The applicant estimates an average annual generation of 4,700,000 kWh. The applicant estimates the costs of studies under the permit to be $37,500.

l. *Purpose of Project:* Project energy would be sold to a local municipality or to the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10488-000.

c. *Date Filed:* October 5, 1987.

d. *Applicant:* Natural Energy Resources Company.

e. *Name of Project:* Rocky Point.

f. *Location:* On the Taylor and East Rivers and Spring Creek in Gunnison County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Allen D. Miller, President, Natural Energy Resources Company. 3855 Highway 105 West, P.O. Box 561, Palmer Lake, CO 80133, (303) 481–2003.

j. *FERC Contact:* Mr. Hector M. Perez, (202) 376–1669.

j. *Comment Date:* February 4, 1988.

k. *Description of Project:* The proposed pumped-storage project would utilize the existing Bureau of Reclamation's Taylor Park Reservoir as the lower reservoir and would consist of: (1) The Rocky Point Reservoir which will have a surface area of 50 acres at the maximum water surface elevation of 11,650 feet msl; (2) a 122-foot-high, 5,600-foot-long rockfill dam, located in the plateau area between Matchless Mountain and Rocky Point, with a crest elevation of 11,666 feet msl; (3) an inlet/outlet structure in the reservoir at elevation 11,526 feet msl; (4) a 17.5-foot-diameter, 3,900-foot-long tunnel; (5) a powerhouse with four 257-MW single stage, vertical, reversible pump/turbines coupled to motor generators; (6) a 23-foot-diameter, 6,000-foot-long tailrace tunnel; (7) an inlet/outlet structure in Taylor Park Reservoir; (8) a 345-kV, 32-mile-long transmission line connecting the project to an existing Western Area Power Administration distribution line; and (9) other appurtenances. Applicant estimates an average annual generation of 1,051,000 MWh.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CR 4.30(b)(1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 3, 1987.

Lois D. Cashell,

Action Secretary.

[FR Doc. 87–28134 Filed 12–7–87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of

the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000093–040.
Title: North Europe-U.S. Pacific Freight Conference.
Parties:
Hapag-Lloyd AG
Johnson Scanstar
Compagnie Generale Maritime
Incotrans BV
Sea-Land Service, Inc.

Synopsis: The proposed amendment would clarify that no party may enter into a loyalty contract in the trade whether through purported use of independent action or otherwise.

Agreement No.: 207–011157.
Title: Safbank Joint Venture Agreement.
Parties:
The Bank Line Limited (Bank Line)
The South African Marine Corporation Limited.

Synopsis: The proposed agreement would establish a joint venture company (Safbank) between the parties in the trade between United States ports and points, and ports in South West Africa/Namibia, South Africa and Mozambique, and points served via those ports. The agreement would also include a space chartering and joint marketing arrangement between Safbank and Bank Line including Bank Line's East African service.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: December 2, 1987.

[FR Doc. 87–28050 Filed 12–7–87 8:45 am]
BILLING CODE 6730–01–M

[Docket No. 87–26; Agreement No. 202–010689–027]

Transpacific Westbound Rate Agreement Loyalty Contracts; Order To Show Cause

This proceeding is instituted pursuant to sections 5, 8, 10, 11, 12 and 13 of the Shipping Act of 1984 (hereinafter, the "1984 Act" or "Act"), 46 U.S.C. app. 1704, 1707, 1709, 1710, 1711 and 1712.

The Transpacific Westbound Rate Agreement, a conference of ocean common carrier members (hereinafter, the "Conference" or "TWRA") [1] filed Agreement No. 202–010689–027 (hereinafter, the "Agreement") which, *inter alia*: (1) Prohibits any party to the Agreement from taking independent action (hereinafter, "IA") for the purpose of entering into a lyalty contract (Article 13(h)(ii) of the Agreement; [2] and (2) prohibits any party to the Agreement from entering into a loyalty contract (Article 5(e) of the Agreement).[3]

Comments in opposition to the Agreement were filed by Chemical Manufacturers Association; U.S. Department of Justice; Dow Chemical International Operations; E.I. DuPont De Nemours and Company (DuPont); and the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA). All commentators contend that, because the Agreement deprives members of the TWRA of the right to take IA on loyalty contracts, a rate or service item required to be filed in a tariff, the Agreement violates section 5(b)(8) of the 1984 Act, 46 U.S.C. app. 1704(b)(8).

DePont aruges that the Agreement authorizes concerted action resulting in an unreasonable refusal to deal, in violation of sections 5(b)(5) and 19(c)(1) of the Act, 46 U.S.C. app., 1704(b)(5) and 1709(c)(1). DuPont also urges that the Agreement unreasonably restricts the use of intermodal services or technological innovations, in violation of section 10(c)(2) of the Act, 46 U.S.C. app. 1709(c)(2).

NCBFAA claims that the Agreement, denying shippers the benefit of lower freight rates under loyalty contracts, constitutes undue or unreasonable prejudice or disadvantage, in violation of section 10(b)(12), 46 U.S.C. app. 1709(b)(12). NCBFAA further claims that by such denial the Agreement fails to establish and enforce just and reasonable practices relating to the receiving, handling, storing or delivering of property, in violation of section 19(d)(1) of the Act, 46 U.S.C. app. 1709(d)(1). NCBFAA also claims that the Agreement is likely to reduce competition and produce an unreasonable increase in transportation costs, in violation of section 6(g) of the Act, 46 U.S.C. app. 1705(g).

The Agreement became effective October 19, 1987.

The term "loyalty contract" is defined at section 3(14) of the 1984 Act, 46 U.S.C. app. 1702(14), to mean:

> . . . a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

It appears that the cited articles of the Agreement violate the Act for the reasons which follow.

Section 5(b)(8) of the 1984 Act,[4] requires that each conference agreement must provide that its members may take independent action "on any rate or service item required to be filed in a tariff under section 8(a) * * *." As pertinent, section 8(a)(1), 46 U.S.C. app. 1707(a)(1), requires that tariffs shall:

> (E) include sample copies of any loyalty contract, bill of lading, contract of affreightment, or other document evidencing the transportation agreement.

Accordingly, a loyalty contract is a rate or service item required to be included in a tariff within the meaning of section 8(a) of the 1984 Act. Therefore, by prohibiting IA on loyalty contracts, it appears that the Agreement is in violation of section 5(b)(8) of the Act.

The sole statutory provision expressly restricting the use of a loyalty contract by an ocean common carrier is that such contract conform to the antitrust laws. Section 10(b)(9) of the 1984 Act, 46 U.S.C. app. 1709(b)(9). However, neither section 10(b)(9) nor any other provision of the 1984 Act authorizes a conference to undertake any action infringing upon a member's prerogative to enter into loyalty contracts.

In addition, section 5(b)(5) of the Act requires that each conference agreement must "prohibit the conference from engaging in conduct prohibited by section 10(c)(1)" of the Act. Section 10(c)(1) provides that no conference or group of two or more common carriers may:

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[1] The members of the Conference are: American President Lines, Ltd.; Hanjin Container Lines, Ltd.; Hyundai Merchant Marine Co., Ltd.; Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; A.P. Moller-Maersk Line; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Sea-Land Service, Inc.; Showa Line, Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.; and Orient Overseas Container Line, Inc.

The geographic scope of the Conference agreement is from ports and points in Canada and the U.S. via Atlantic, Gulf and Pacific coasts (including Alaska) to ports and points in the Far East.

[2] Article 13(h)(ii) of the Agreement bars members from taking IA to establish or change: "any loyalty contract, or amendment thereto (except to eliminate such a contract.)"

[3] Article 5(e) of the Agreement provides: "(e) Loyalty Contracts. No party may enter into a loyalty contract."

[4] As pertinent, section 5 provides:
(b) CONFERENCE AGREEMENTS—Each conference agreement must—
* * *
(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act . . . in lieu of the existing conference tariff provisions for that rate or service item.

boycott or take any other concerted action resulting in an unreasonable refusal to deal.

Further, section 10(a)(3) of the Act, 46 U.S.C. app. 1709(a)(3) provides that no person may "operate under an agreement required to be filed * * * except in accordance with the terms of the agreement * * *".

Article 11 of the underlying Conference Agreement (Agreement No. 202–010689, as restated in Agreement No. 202–010689–025) provides, *inter alia*, that TWRA shall not take concerted action resulting in an unreasonable refusal to deal. Nonetheless, by collectively authorizing and agreeing to Articles 13(h)(ii) and 5(e), which severally and jointly result in an arbitrary and capricious refusal to deal with shippers who might otherwise seek to enter into loyalty contracts, it appears that TWRA and its members negated the effect of and operated contrary to Article 11 and the prohibition required by section 5(b)(5), and thereby violated sections 5(b)(5), 10(a)(3), and 10(c)(1) of the Act.[5]

Now therefore, it is ordered That pursuant to section 11 of the Shipping Act of 1984, the Transpacific Westbound Rate Agreement and its members show cause why they should not be found to be operating in violation of section 5(b)(8) of the Shipping Act of 1984 for not complying with the mandatory independent action provision of that section of the 1984 Act and, if found to be operating in violation, why the Agreement should not be disapproved, canceled, or modified by the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, the Transpacific Westbound Rate Agreement and its members show cause why they should not be found to be in violation of section 5(b)(5) of the Shipping Act of 1984 for not prohibiting concerted action resulting in an unreasonable refusal to deal and, if found to be operating in violation of section 5(b)(5) of the 1984 Act, why the Agreement should not be disapproved, canceled or modified by the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, the Transpacific Westbound Rate Agreement and its members show cause why they should not be found to be in violation of section 10(c)(1) of the Shipping Act of 1984 for taking concerted action resulting in an unreasonable refusal to deal and, if found to be operating in violation of section 10(c)(1) of the 1984 Act, why Agreement No. 202–010689–027 should not be disapproved, canceled or modified by the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, the Transpacific Westbound Rate Agreement and its members show cause why they should not be found to be in violation of section 10(a)(3) of the Shipping Act of 1984 for operating other than in accordance with the terms of the underlying Conference Agreement, which prohibits taking concerted action resulting in an unreasonable refusal to deal and, if found to be operating in violation, why Agreement No. 202–010689–027 should not be disapproved, canceled or modified by the Commission;

It is further ordered That should it be determined that the Transpacific Westbound Rate Agreement and its members have operated in violation of sections 5(b)(5), 5(b)(8), 10(a)(3) or 10(c)(1) of the Act the matter may, pursuant to section 13 of the Shipping Act of 1984, be referred to an Administrative Law Judge in an appropriate proceeding to determine whether penalties should be assessed and, if so, the level of such penalties;

It is further ordered That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact and shall be filed no later than the day fixed below;

It is further ordered That the Transpacific Westbound Rate Agreement and its members are named Respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents and any intervenors in support of Agreement No. 202–010689–027 no later than January 15, 1988;

It is further ordered That the commentators in opposition to Agreement No. 202–010689–027 are named Protestants in this proceeding;

It is further ordered That the Commission's Bureau of Hearing Counsel be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Hearing Counsel, Protestants and any intervenors in opposition to Agreement No. 202–010689–027 no later than February 15, 1988;

It is further ordered That rebuttal affidavits and memoranda of law, if any, shall be filed by Respondents and intervenors in support no later than March 1, 1988;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and

(c) Any such request for evidentiary hearing or oral argument shall be filed no later than March 11, 1988;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondents and Protestants;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by July 1, 1988.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–28121 Filed 12–7–87; 8:45 am]

BILLING CODE 6730–01–M

[5] This proceeding is instituted for the purpose of determining whether TWRA acted in conformity with the 1984 Act in prohibiting its members from entering into loyalty contracts with shippers. Therefore, because the provisions of a particular loyalty contract are not in issue, this proceeding does not seek to inquire, under the provisions of the 1984 Act, into the lawfulness of any such loyalty contract—e.g., whether a particular loyalty contract may violate section 10(b)(10) of the Act, 46 U.S.C. app. 1709(b)(10), which prohibits a common carrier from demanding, charging, or collecting any rate or charge that is unjustly discriminatory between shippers or ports.

FEDERAL RESERVE SYSTEM

Huntington Bancshares Incorporated, et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 24, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated,* Columbus, Ohio; to acquire 84.6 percent of the voting shares of State Bank, Inc., Dayton, Kentucky.

Board of Governors of the Federal Reserve System, December 2, 1987.

James McAfee,

Associate Secretary of the Board

[FR Doc. 87-28073 Filed 12-7-87; 8:45 am]

BILLING CODE 6210-01-M

Shawmut National Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut National Corporation,* Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Hartford National Corporation, Hartford, Connecticut, and thereby indirectly acquire The Connecticut National Bank, Hartford, Connecticut; Seymour Trust Company, Seymour, Connecticut; Chester Bank, Chester, Connecticut; State Savings Bank, formerly Savings and Loan Association of Southington, Inc., Southington, Connecticut; Arltru Bancorporation, Lawrence, Massachusetts, and thereby indirectly acquire Arlington Trust Company, Lawrence, Massachusetts; The Provident Institution for Savings in the Town of Boston, Boston, Massachusetts; First New England Bankshares Corp., Taunton, Massachusetts, and thereby indirectly acquire First Bristol County National Bank, Taunton, Massachusetts; Charter Financial Corporation, Framingham, Massachusetts, and thereby indirectly acquire Framingham Trust Company, Framingham, Massachusetts; Massachusetts National Corporation, Hartford, Connecticut, and thereby indirectly acquire First Bank, Chelmsford, Massachusetts; and Rhode Island Bancorp, Inc., Hartford, Connecticut, and thereby indirectly acquire Peoples Bank, National Association, formerly Peoples Bank, FSB, Johnston, Rhode Island; and Shawmut Corporation, Boston, Massachusetts, and thereby indirectly acquire Shawmut Bank, National Association, Boston, Massachusetts; Shawmut First Bank & Trust Company, Springfield, Massachusetts; Shawmut Bank of Southeastern Massachusetts, N.A., New Bedford, Massachusetts; Shawmut Worcester County Bank, N.A., Worcester, Massachusetts; Shawmut Bank of Hampshire County, N.A., Amherst, Massachusetts; Shawmut Bank of Franklin County, Greenfield, Massachusetts; Shawmut Bank of Cape Cod, N.A., Orleans, Massachusetts; Shawmut Home Bank, formerly Home Bank & Trust Company, Meriden, Connecticut; and Shawmut Fidelity Bank, formerly, The Fidelity Trust Company, Stamford, Connecticut.

In connection with this application, Applicant has also applied to acquire Connecticut National Mortgage Company, West Hartford, Connecticut, and thereby engage in making, acquiring, selling or servicing loans or other extensions of credit pursuant to § 225.25(b)(1); and acting as insurance agent or broker with respect to insurance that is directly related to an extension of credit as provided in § 225.25(b)(8)(i) of the Board's Regulation Y; Connecticut National Trust Company of Florida, Stuart, Florida, and thereby engage in performing fiduciary, agency and custody services for customers in Florida and Connecticut pursuant to § 225.25(b)(3) of the Board's Regulation Y; Hartford Trust Company of New York, New York, New York, and thereby engage in performing fiduciary, agency and custody services for customers in New York and Connecticut pursuant to § 225.25(b)(3) of the Board's Regulation Y; One Federal Asset Management, Inc., Boston, Massachusetts, and thereby engage in providing investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y; Shawmut Brokerage Services, Inc.,

Boston, Massachusetts, and thereby engage in providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y; Shawmut Connecticut Corporation, Hartford, Connecticut, and thereby engage in originating, packaging, selling and servicing residential mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y; Shawmut Credit Corporation, Boston, Massachusetts, and thereby engage in originating, packaging, selling and servicing residential mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y; Shawmut Insurance Agency, Inc., Worcester, Massachusetts, and thereby engage in acting as principal, agent or broker for insurance that is directly related to an extension of credit by Applicant or any of its subsidiaries and limited to assuring repayment of the outstanding balance due on the extension of credit in the event of death, disability or involuntary unemployment of the debtor; pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y and acting as principal agent or broker with respect to property and casualty that is directly related to extensions of credit by Shawmut Corporation or any of its subsidiaries pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y; Shawmut Life Insurance Company, Inc., Phoenix, Arizona, and thereby engage in underwriting, as reinsurer, credit and life and credit accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y; Shawmut Securities Clearance Corp., New York, New York, and thereby engage in securities clearance and related and incidental activities pursuant to § 225.25(b)(3) of the Board's Regulation Y; and American Agcredit Corporation, Fort Worth, Texas, and thereby engage in making, servicing or acquiring loans or other extensions of credit to agricultural enterprises or secured by agricultural commodities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 2, 1987.

James McAfee,

Associate Secretary of the Board

[FR Doc. 87-28074 Filed 12-7-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 11/17/87 and 11/30/87

Name of acquiring person, name of acquired person, name of acquired entity	PMN number	Date terminated
PPG Industries, Inc	88-0139	11/17/87
Plate Glass & Shatterprufe Industries, Ltd.		
Solaglas USA, Inc.		
Pegasus Gold Inc	88-0205	11/17/87
U.S. Minerals Exploration Co		
U.S. Minerals Exploration Co.		
CalFed Inc	88-0219	11/17/87
James B. Lindsey, Sr.		
Puritan Leasing Co.		
Amoco Corp	88-0229	11/17/87
Tenneco Inc.		
Tenneco Oil Co.		
AB Electrolux	88-0134	11/18/87
Trust of Sam N. Regenstrief, c/o Leonard J. Betley		
Design & Manufacturing Corp.		
Marsh & McLennan Companies, Inc	88-0140	11/18/87
The TBS Group, Inc.		
The TBS Group, Inc.		
Schroder Venture Trust	88-0207	11/18/87
Northern Foods plc.		
Flagship Cleaning Services Inc.		
Atlanta Gas Light Co	88-0231	11/18/87
Jerrold Wexler		
Jupiter Industries, Inc.		
Jerrold Wexler	88-0232	11/18/87
Atlanta Gas Light Co.		
Atlanta Gas Light Co.		
Anthonie C. van Ekris	88-0244	11/18/87
Kay Jewelers, Inc.		
Kay Jewelers, Inc.		
Certified Grocers of California, Ltd	88-0255	11/18/87
Alfred M. Lewis, Inc.		
Alfred M. Lewis, Inc.		
Merchants Distributors, Inc	88-0274	11/18/87
Byrd Food Stores, Inc.		
Byrd Food Stores, Inc.		
Aritech Corp. (Delaware)	88-0284	11/18/87
Wade E. Mose		
Moose Products, Inc.		
Royal Dutch Petroleum Co	88-0293	11/18/87
Texaco Inc.		
Texaco Producing Inc.		
Canadian Pacific Ltd	88-0138	11/19/87
IC Industries, Inc.		
Assets of UPE		
Attilio F. Petrocelli	88-0187	11/19/87
Metrex Corp.		
Metrex Corp.		
William S. Hack and Pearl H. Hack	88-0189	11/19/87
Metex Corp.		
Metex Corp.		
Kinder-Care, Inc	88-0223	11/19/87
Shoe City Corp.		
Shoe City Corp.		
LifeSpan Inc	88-0257	11/19/87
Methodist Health Care of Minnesota.		
Methodist Health Care of Minnesota.		
Hope & Flower B.P. Partnership	88-0259	11/19/87
Hotel Equities (Not Inc.)		
Hotel Equities (Not Inc.)		
Methodist Health Care of Minnesota	88-0268	11/19/87
LifeSpan Inc.		
LifeSpan Inc.		
Osamu Aoyama	88-0270	11/19/87
Harry Weinberg		
Honolulu Limited, The Harry and Jeanette Weinberg.		
Exxon Corp	88-0275	11/19/87
Sun Company, Inc.		
Sun Operating Limited Partnership.		
Roxboro Investments (1976) Ltd	88-0279	11/19/87
Security Pacific Corp.		
Rainier Leasing, Inc.		
Adobe Resources Corp	88-0280	11/19/87
Gas Gathering Systems, Inc.		
Gas Gathering Systems, Inc.		
Norsk Hydro a.s.	88-0295	11/19/87
Charles M. Atkinson		
Rogue Valley Polymers, Inc.		
Stone Forest Industries, Inc	88-0298	11/19/87
Stone Container Corp.		
Crystal II Acquisition Corp.		
USX Corp	88-0306	11/19/87
PPG Industries, Inc.		
PPG Industries, Inc.		
General Mills, Inc	88-0307	11/19/87
Accor S.A.		
Seafood Broiler, Inc.		
Subaru of America, Inc	88-0316	11/19/87
James G. Robinson		
Subaru Mid-America, Inc.		
PacifiCorp	88-0321	11/19/87
BankAmerica Corp.		
BankAmerica Commercial Corp., BancAmerica		
Michael C. and Karen P. Cameron, c/o KMC Group, Inc	88-0322	11/19/87
The Prudential Insurance Company of America		
Beverage Management, Inc.		
The Citizens and Southern Corp	88-0333	11/19/87
Chemical New York Corp.		
Chemical Bank & Chemical Business Credit Corp.		
National Car Rental System, Inc	88-0341	11/19/87
Katherine S. LeVeque		
Robert J. Motors, Inc.		
C. H. Beazer (Holdings) PLC	88-0152	11/20/87
J. Ralph Squires		
J. Ralph Squires		
Faber-Castell Corp.	88-0157	11/20/87
Eberhard Faber, Inc.		
Eberhard Faber, Inc.		
Precision Mecanique Labinal S.A	88-0201	11/20/87
TRW Inc.		
TRW Inc.		
Southmark Corp	88-0283	11/20/87
Servico, Inc.		
Servico, Inc.		
Dominion Textile Inc	88-0291	11/20/87
Morgan Stanley Group Inc.		
Burlington Fabrics I Inc.		
The Dow Chemical Co	88-0294	11/20/87
United Agriseeds, Inc.		
United Agriseeds, Inc.		
John R. Furman	88-0301	11/20/87
STK Enterprises, Inc.		
STK Enterprises, Inc.		
Franz Haniel & Cie. GmbH	88-0304	11/20/87
Gordon G. Henke		
C&H Distributors, Inc.		
Control Data Corp	88-0193	11/23/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 11/17/87 and 11/30/87—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN number	Date terminated
Time Inc.		
SAMI/Burke Inc.		
Alleghany Corp	88-0196	11/23/87
The St. Paul Co., Inc.		
The St. Paul Co., Inc.		
Continental Cablevision, Inc	88-0200	11/23/87
American Cablesystems Corp.		
American Cablesystems Corp.		
Continental Cablevision, Inc	88-0208	11/23/87
American Cablesystems Corp.		
American Cablesystems Corp.		
Providence Journal Co	88-0234	11/23/87
Continental Cablevision, Inc.		
Continental Cablevision, Inc.		
Continental Cablevison, Inc	88-0235	11/23/87
Providence Journal Co.		
Providence Journal Co.		
The Broken Hill Proprietary Company, Limited	88-0241	11/23/87
Hamilton Oil Corp.		
Hamilton Oil Corp.		
Fireman's Fund Corp	88-0271	11/23/87
Louisiana Land & Exploration Co.		
Louisiana Land & Exploration Co.		
The Hondo Co	88-0302	11/23/87
Pauley Petroleum Inc.		
Pauley Petroleum Inc.		
Pauley Petroleum Inc	88-0303	11/23/87
The Hondo Co.		
Hondo Oil & Gas Co.		
Uri Sheinbaum	88-0320	11/23/87
Northview Corp.		
Northview Corp.		
Northview Corp	88-0334	11/23/87
Uri Sheinbaum		
Calmark Financial		
American Telephone & Telegraph Co	88-0350	11/23/87
Manufacturers Hanover Corp.		
The CIT Group/Sales Financing, Inc., (Delaware)		
Carl C. Icahn	88-0202	11/24/87
USX Corp.		
USX Corp.		
Benlox Holdings, PLC	88-0267	11/24/87
Storehouse PLC		
Storehouse PLC		
Sequa Corporation	88-0292	11/24/87
Atlantic Research Corp.		
Atlantic Research Corp.		
The Plessey Co. plc	88-0300	11/24/87
Sippican, Inc.		
Sippican, Inc.		
Parker Hannifin Corp	88-0214	11/25/87
GULL Inc.		
GULL Inc.		
Jon M. Huntsman	88-0288	11/25/87
Royal Dutch Petroleum Company		
Royal Dutch Petroleum Company		
Nippon Piston Ring Co., Ltd	88-0315	11/25/87
Goetze AG		
Goetze Corporation of America		
Hunter Acquisition Corp	88-0319	11/25/87
Hordis Brothers, Inc.		
Hordis Brothers, Inc.		
Emmett Roe	88-0324	11/25/87
Northern Foods plc		
Havenpride Farms, Inc.		
S&W Berisford PLC	88-0327	11/25/87
Germain's, Inc.		
Germain's, Inc.		
Dominion Resources, Inc	88-0329	11/25/87
Catalyst Energy Corp.		
Catalyst Energy Corp.		
Catalyst Energy Corp	88-0330	11/25/87
Dominion Resources, Inc.		
Dominion Resources, Inc.		
Fruit Growers Supply Co	88-0351	11/25/87
Allied-Signal Inc.		
The Bendix Foresthill Timberland Trust		
The Rouse Co	88-0367	11/25/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 11/17/87 and 11/30/87—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN number	Date terminated
Corporate Property Investors.		
Alamada and Northwest Mall Joint Ventures		
Boral Ltd	88-0371	11/25/87
J.W. Mitchell, Jr. and Sandra L. Mitchell		
SARR Co. and assets of J.W. and Sandra L. Mitchell		
Lucky Stores, Inc	88-0195	11/26/87
Forvine Associates Limited Partnership		
Forvine Associates Limited Partnership		
Melvin Simon	88-0108	11/27/87
Louis Walter		
Louis Walter		
The Sherwin-Williams Co	88-0228	11/27/87
Mobil Corp.		
Standard T. Chemical Company, Inc.		
James River Corp. of Virginia	88-0331	11/27/87
Den norkse Creditbank		
Save Holding Inc.		
V. Prem Watsa	88-0369	11/27/87
Alexander & Alexander Services, Inc.		
Shand, Morahan & Co., Inc.		
Alltel Corp	88-0399	11/27/87
Contel Corp.		
Contel Texocom		
PepsiCo, Inc	88-0313	11/30/87
Calny, Inc.		
Calny, Inc.		
E-II Holdings Inc	88-0356	11/30/87
Wyndham Foods, Inc.		
Zaterain's Inc.		
General Electric Co	88-0376	11/30/87
Harcourt Brace Jovanovich, Inc.		
HBJ Publications Inc.		

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-28139 Filed 12-7-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-87-1759]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Housing Owner's Certification and Application for Tenant Assistance Payments, Schedule of Tenant Assistant Payments Due, Schedule of Section 8 Special Claims, Special Claims Worksheet

Office: Housing

Description of the need for the information and its proposed use: These forms are used by owners to request monthly housing assistance payments for eligible families, to limit the number of section 8 units to those families whose incomes are less than 50 percent of the area median, and to

restrict admission of ineligible tenants.
Form number: HUD–52670 and 52670A, Parts 1 and 2
Respondents: Individuals or Households and Businesses or Other For-Profit
Frequency of response: Monthly
Estimated burden hours: 142,056
Status: Extension
Contact: Judith L. Lemeshewsky, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 2, 1987.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Application Requirements
Office: Public and Indian Housing
Description of the need for the information and its proposed use: These forms will be used by Public Housing Agencies/Indian Housing Authorities (PHAs/IHAs) in assessing their physical and management improvement needs and in applying for modernization funds. These forms are necessary to implement the statutory requirements of the CIAP.
Form number: HUD–52821, 52823, 52824, and 52825
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of submission: On Occasion and Annually
Estimated Burden Hours: 16,288
Status: Extension
Contact: Pris P. Buckler, HUD, (202) 755–6640; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 2, 1987.

Proposal: Report on Program Utilization—Section 8 Moderate Rehabilitation Program
Office: Housing
Description of the need for the information and its proposed use: The form is used by HUD to monitor Public Housing Agency's (PHA) progress in implementing the Moderate Rehabilitation Program and as a means of approving PHA requisitions for funds. Also, the form will assist HUD in identifying those projects where a reduction in the number of units under an Annual Contributions Contract (ACC) is required due to underutilization by the PHA.
Form number: HUD–52685
Respondents: State or Local Governments
Frequency of submission: Quarterly and Annually
Estimated Burden Hours: 600
Status: Extension
Contact: Alfonso M. Bell, HUD, (202) 755–6650; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1987.

Proposal: Public Housing Manager Certification Compliance, 24 CFR 967.305
Office: Public and Indian Housing
Description of the need for the information and its proposed use: Each Public Housing Agency (PHA) is required to submit to HUD, with the proposed operating budget for each fiscal year, a list of its "Housing Manager" and "Assistant Housing Manager" positions as reflected in the proposed budget. HUD needs this information to review the PHA's compliance with the provisions of the regulation.
Form number: None
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of submission: Annually
Estimated Burden Hours: 1,500
Status: Extension
Contact: Odessa W. Burroughs, HUD, (202) 755–7970; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1987.

Proposal: Loans for Housing for the Elderly or Handicapped—Housing Assistance Payments Contract and Project Management
Office: Housing
Description of the need for the information and its proposed use: This regulation will amend 24 CFR Part 885 which governs projects that receive direct loans under section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the United Housing Act of 1937. The proposed rule would add regulatory provisions to govern the housing assistance payments contract, project operations, and project management.
Form Number: None
Respondents: Individuals or Households, Federal Agencies or Employees, and Non-Profit Institutions
Frequency of response: Annually and On Occasion
Estimated burden hours: 120,673
Status: New
Contact: James J. Tahash, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 24, 1987.

Proposal: Single Family Mortgage Insurance on Allegany Reservation of Seneca Indians
Office: Housing
Description of the need for the information and its proposed use: This rule implements section 203(q) of the National Housing Act. The information is necessary to assure that borrowers fully realize their risks, and to document that remedies, other than assignment and foreclosure, have been exhausted.
Form Number: None
Respondents: Individuals or Households and Businesses or Other For-Profit
Frequency of response: On Occasion
Estimated burden hours: 350
Status: New
Contact: Richard E. Harrington, HUD, (202) 755–5676; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 24, 1987.

Proposal: Competitive Bidding for Section 202 Direct Loan Program for Elderly or Handicapped
Office: Housing
Description of the need for the information and its proposed use: Under section 202 of the Housing Act of 1959, competitive bidding on construction contracts is now mandatory except in certain specified instances. The procedures are similar to private competitive biddings rather than Government procurement as project owners are private entities. This information is needed to implement cost savings procedures for this direct loan program.
Form Number: HUD–2530, 2554, 92323, 92442–A–EH, 92443, 92450–EH, and 92452–EH
Respondents: Businesses or Other For-Profit
Frequency of response: On Occasion
Estimated burden hours: 8,000
Status: Reinstatment
Contact: James L. Hamernick, HUD, (202) 755–6500; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the

Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 2, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-28124 Filed 12-7-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for extension of the expiration date under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). No changes have been requested on the current approved collection. Copies of the collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: State Water Research Institute Program, 30 CFR Part 401.

Abstract: Respondents supply information on eligibility for Federal grants to support water-related research and provide performance reports on accomplishments achieved through use of such funds. This information allows the agency to determine compliance with the objectives and criteria of the grant program.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: State water research institutes.

Annual Responses: 108.

Annual Burden Hours: 2160.

Bureau clearance officer: Geraldine A. Wilson 703-648-7309.

Date: November 25, 1987.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 87-28061 Filed 12-7-87; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[WY-040-08-4400-90]

Resources Management Plans; Pinedale Resources Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Pinedale Proposed Resource Management Plan/Final Environmental Impact Statement (RMP/EIS).

SUMMARY: The Pinedale Resource Area encompasses portions of Lincoln, Sublette, and Teton counties. The Pinedale Proposed RMP/Final EIS addresses future options for managing 931,000 acres of public land and 1,185,000 acres of federal mineral estate in portions of Lincoln and Sublette counties within the Bureau's Pinedale Resource Area in southwest Wyoming.

The Pinedale Draft RMP/EIS was made available for public review and comment in February of 1987. Comments received on the Draft RMP/EIS were considered in preparing the proposed RMP/Final EIS. Since other documents address wilderness values within the planning area, this RMP/EIS does not address wilderness values in detail.

Management prescriptions are presented for the following resources: minerals (mostly oil and gas), watershed values, wildlife, livestock grazing, wild horses, forest resources, cultural values, and recreation (including off-road vehicles).

The Pinedale Proposed RMP/Final EIS has been prepared in an abbreviated format. The alternatives considered in the Draft RMP/EIS, and the environmental effects of those alternatives, have not been reprinted in the Proposed RMP/Final EIS. It is necessary, therefore, to use both the Draft and Final RMP/EIS documents for a complete review of the EIS. The proposed alternative is the only alternative printed in its entirety. This alternative provides for managing and allocating BLM-administered public land and resource uses within the Pinedale Resource Area. This alternative was chosen as the proposed management plan for the area and would provide for realistic management of the BLM-administered public lands.

The Pinedale RMP/EIS is primarily focused on resolving four key resource management issues that were identified with public involvement early in the planning process. The issues identified were: (1) Conflicts between surface-disturbing development activities and other land and resource uses, and the identification of areas that are suitable or unsuitable for development activities; (2) adequacy of resource accessibility and manageability, and the identification of access needs and areas suitable for disposal; (3) conflicts between consumptive and nonconsumptive resources uses, and the identification of lands where activities, such as timber harvest and livestock grazing, are acceptable and compatible with our resource uses; and (4) conflicts between off-road vehicle (ORV) use and other land and resource uses, and identification of ORV use areas and other recreation facility needs.

The proposed plan is a complete, comprehensive management proposal. It is a refinement of the preferred alternative presented in the draft RMP/EIS. Comments from the public, review by BLM staff, and new information developed since the distribution of the draft have prompted some changes in the preferred alternative. The environmental effects of the proposed plan are not substantively different from those of the preferred alternative.

All parts of the proposed Resource Management Plan may be protested by parties who participated in the planning process and who have an interest which is or may be adversely affected by the adoption of the plan. A protest may raise only those issues which were submitted for the record during the planning process.

DATES: Protests on the Proposed Plan/Final EIS must be postmarked within 30 days after the date the EPA filing notice is published in the **Federal Register.**

ADDRESSES: Protests on the proposed Plan/Final EIS should be sent to: Director (760), Bureau of Land Management, 18th & C Streets NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: DeLon Potter, Pinedale Resource Area Manager, Pinedale Resource Area Office, P.O. Box 768, Pinedale, Wyoming 82941 (307) 367-438 or Renee Dana, RMP/EIS Team Leader, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902-1869 (307) 382-5350. Copies of the Pinedale Proposed RMP/Final EIS are available in the Pinedale Resource Area Office and the Rock Springs District Office.

SUPPLEMENTARY INFORMATION: The Pinedale Proposed RMP/Final EIS provides for designating about 3,458 acres of BLM-administered public surface and mineral estate within the Beaver Creek area, as the Beaver Creek Area of Critical Environmental Concern (ACEC). Within the boundaries of the proposed ACEC are lands with privately owned surface encompassing approximately 480 acres. The

designation would pertain only to the surface and mineral estate managed by the BLM and the BLM-administered federal mineral estate under private lands. The non-BLM administered surface would not be affected by the designation.

Upon designation of the Beaver Creek ACEC, management prescriptions for the area would optimize fisheries and wildlife resource values over other resource concerns in the area, due to the sensitivity and national importance of the Colorado River cutthroat trout. Management direction for the area includes preparation of an ACEC management plan to provide specific guidelines for management of the area. Limitations for management of the proposed ACEC include restricting but not precluding, stream crossings, surface disturbing activities, timber harvesting, and limiting ORV activity to existing roads and trails. Such activities would be allowed, provided Colorado River cutthroat trout habitat would not be adversely affected.

The previously established Rock Creek ACEC would remain a designated ACEC. The Rock Creek area was originally designated in 1982 to protect Colorado River cutthroat trout habitat. Limitations in this area include no surface occupancy for surface disturbing activities, closure to locatable mineral entry in the Rock Creek drainage, restricted timber harvesting, and an ORV closure.

Management of wilderness values is not addressed in this RMP/EIS. The two wilderness study areas (WSAs) within the Pinedale Resource Area (Scab Creek WSA and Lake Mountain WSA) are addressed in the Draft Scab Creek Wilderness Suitability Report and EIS, December 1981, and the Rock Springs District Wilderness EIS, February 1983.

In accordance with the provisions of 36 CFR Part 800, parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the archeological and historical resource aspects addressed in the proposed plan, are requested to identify themselves. Through contacting the Rock Springs, BLM District Office at the above address, you will be place on a future contact list.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 87-28064 Filed 12-7-87; 8:45 am]

BILLING CODE 4310-22-M

[CA-940-08-4220-10; CA 3872]

Partial Termination of Proposed Withdrawal and Reservation of Land; California

November 30, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of the U.S. Department of Agriculture, Forest Service, application CA 3872 for the withdrawal and reservation of National Forest System lands from appropriation under the United States mining laws (30 U.S.C. Ch. 2) for use as a recreation site—the Middle Meadows Group Campground—located within the Eldorado National Forest, was published in the **Federal Register**, 42 FR 10903, February 24, 1977. The U.S. Department of Agriculture has cancelled its application as to the following described lands:

Mount Diablo Meridian

T. 14 N., R. 13 E.,
Sec. 24, W½NE¼NE¼, W½E½NE¼NE¼, N½SE¼NW¼NE¼, and NW¼SE¼NE¼.

The area described contains 45 acres in El Dorado County.

Date: At 10 a.m. on January 11, 1988, the lands will be relieved of their segregative effect in accordance with the regulations in 43 CFR 2310.2-1(c).

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4815).

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87-28063 Filed 12-7-87; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 28, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 23, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Santa Fe Springs, *Hawkins—Nimocks Estate-Patricio Ontiveros Adobe*, 12100 Telegraph Rd.

CONNECTICUT

Fairfield County

Danbury, *Hearthstone*, 18 Brushy Hill Rd.

Litchfield County

Torrington, *Torrington Fire Department Headquarters*, 117 Water St.

Windham County

Thompson, *Thompson Hill Historic District*, Chase & Quaddick Rds., CT 193 & CT 200

INDIANA

Hamilton County

Atlanta, *Roads Hotel*, 150 E. Main St.

Johnson County

Franklin, *Zeppenfeld, August, House*, 300 W. Jefferson St.

KENTUCKY

Lincoln County

Stanford vicinity, *Withers, Horace, House*, KY 590 (Hubble Rd.)

MAINE

Androscoggin County

Lewiston, *Clifford, John D., House*, 14—16 Ware St.
Lewiston, *Saint Mary's General Hospital*, 45 Golder St.

Cumberland County

Portland, *Maine Central Railroad General Office Building*, 222-224 St. John St.

Hancock County

Bucksport, *Buck Memorial Library*, Maine St.
Bucksport, *Heywood, Phineas, House*, 343 Maine St.
Southwest Harbor vicinity, *Raventhorp—J.G. Thorp Summer Cottage*, Greening Island

Oxford County

Fryeburg, *Fryeburg Registry of Deeds*, 96 Main St.

MARYLAND

Baltimore County

Catonsville, *St. Charles College Historic District (Boundary Increase)*, 711 Maiden Choice La.

MICHIGAN

Houghton County

Houghton, *Shelden Avenue Historic District*, Shelden, Lake & Montezuma Aves.

NEW YORK

Dutchess County

Beacon, *Lower Main Street Historic District,* 142–192 & 131–221 Main St.

Monroe County

Penfield vicinity, *Rich, Samuel, House,* 2204 Five Mile Line Rd.

NORTH CAROLINA

Union County

Lee, Malcolm K., House, Monroe vicinity, *Waxhaw—Weddington Roads Historic District,* Jct. of NC 75, NC 84 & W. Franklin St.

Monroe, *Monroe Downtown Historic District,* Roughly bounded by Jefferson, Church, Windsor & Stewart Sts

Monroe, *Monroe Residential Historic District,* Roughly bounded by Hough, Franklin, Jefferson, McCarten, Windsor, Sanford, Washington, Braden, Church & Hudson Sts.

PENNSYLVANIA

Berks County

Lobachsville vicinity, *Hartman Cider Press,* Keim Rd., 1.1 miles W of Lobachsville

Cumberland County

Mechanicsburg, *Orris, Adam, House,* 318 W. Main St.

Lancaster County

Denver, *Bucher Thal Historic District,* Weaver Rd.

Montour County

Mooresburg, *Mooresburg School,* PA 642/45

Philadelphia County

Philadelphia, *Center City West Commercial Historic District,* Chestnut St., Fifteenth to Twenty-first, Moravian, Sansom, & Walnut Sts., Fifteenth to Eighteenth, portions of Fifteenth to Twentieth Sts.

Philadelphia, *Pitcairn Building,* 1027 Arch St.

Schuylkill County

Mt. Pleasant, *Mt. Pleasant Historic District,* TR 881 & SR 901

Pine Grove, *Pine Grove Historic District,* S. Tulpehocken & Mill Sts., & Swatara Creek

[FR Doc. 87–28049 Filed 12–7–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Small Carrier Transfer Application
OMB Form No.: 3120–0025
Agency Form No.: OP–FC–1
Frequency: On Occasion
Respondents: Regulated Motor Carriers of Property
No. of Respondents: 30
Total Burden Hrs.: 240
Brief Description of the need & proposed use: Data is required for Commission approval of mergers or transfers of motor passenger carrier operating authority between carriers with annual interstate transportation revenues not exceeding $2 million.

Noreta R. McGee,

Secretary.

[FR Doc. 87–27950 Filed 12–7–87; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., in Washington, DC, on January 5 and 6, 1988, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 5 U.S. Code, section 1242(a)(1)(B) and to review the November 1987 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, possible topics for inclusion on the syllabus for the Joint Board's examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on future Joint Board examinations and review of the November 1987 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the Joint Board examination syllabus will commence at 1:30 p.m. on January 5 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than December 21, 1987 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

Date: December 3, 1987.

[FR Doc. 87–28110 Filed 12–7–87; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

[C.A. 87–7352]

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Air Products and Chemicals, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 17, 1987, a proposed Consent Decree in *United States v. Air Products and Chemicals, Inc., et al.,* C.A. 87–7352, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The Consent Decree requires sixty-nine defendants to, among other things, clean up the McAdoo Associates Site located in Schuylkill County, Pennsylvania and to monitor the remedy for a period up to thirty years.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments shall be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Air Products & Chemicals, Inc., et al.* DOJ ref. 90-11-3-142.

The proposed Consent Decree may be examined at the office of the United States Attorney, Edward S.G. Dennis, Jr., 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania, 19106 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $34.40 (10 cent a page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-28112 Filed 12-7-87; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. 87-1660 (HL)]

Lodging of Consent Decree Pursuant to the Clean Water Act; Key Pharmaceuticals, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given given that a consent decree in *United States v. Key Pharmaceuticals, Inc.*, Civil Action No. 87-1660(HL), was lodged with the United States District Court for the District of Puerto Rico on November 23, 1987. The Decree provides for payment of $170,000 in civil penalties for past violations of the Clean Air Act, a compliance schedule for wastewater treatment plant modifications, a reporting schedule, and substantial stipulated penalties for violations of the Decree.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Key Pharmaceuticals, Inc.*, D.J. Ref. No. 90-5-1-1-2989.

The consent decree may be examined at the office of the United States Attorney, District of Puerto Rico, Room 101, Federal Building, Hato Rey, Puerto Rico 00918; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Evironmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-28113 Filed 12-7-87; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. 86-6644 RSWL(JRX)]

Lodging of a Consent Decree Pursuant to the Solid Waste Disposal Act; Quemetco, Inc. and RSR Corporation

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *December 2, 1987* a proposed Consent Decree in *United States v. Quemetco, Inc. and RSR Corporation*, Civil Action No. 86-6644 RSWL (JRX), was lodged with the United States District Court for the Central District of California.

The complaint filed by the United States alleged violations of the Solid Waste Disposal Act, *as amended*, 42 U.S.C. 6901-6991(i) (1982 & Supp. 1984) (also referred to as the Resource Conservation and Recovery Act) (hereinafter "RCRA"). Specifically, the complaint alleged that defendants failed to comply with RCRA permit, groundwater monitoring, financial responsibility, closure and battery storage requirements at their facility in the City of Industry, California. The complaint also alleged that the defendants' facility had released hazardous wastes into the environment. The complaint sought injunctive relief and the imposition of civil penalties. The lodged Consent Decree requires the defendants to comply with the applicable RCRA groundwater monitoring, financial responsibility, closure and battery storage requirements and pay a $60,000 civil penalty. The Consent Decree also requires defendants to take Corrective Action to address alleged releases of hazardous wastes.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Quemetco, Inc. and RSR Corporation*, Department of Justice Reference #90-7-1-321.

Copies of the proposed Consent Decree may be examined at the following locations: Office of the United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; and, at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6220, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. When requesting a copy, please refer to *United States v. Quemetco, Inc. and RSR Corporation*, Department of Justice Reference #90-7-1-321 and enclose a check in the amount of $5.90 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-28111 Filed 12-7-87; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. C86 5221 DLJ]

Lodging of Settlement Agreement Pursuant to Clean Water Act; Simpson Paper Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 10, 1987, a proposed settlement agreement in *United States v. Simpson Paper Company*, Civil Action No. C86 5221 DLJ, was lodged with the United States District Court for the Northern District of California. The complaint filed by the United States alleged violations of the Clean Water Act by defendent for discharges of a hazardous substance

into Humboldt Bay, California. The settlement agreement provides for payment of a civil penalty in the amount of $23,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed agreement. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20503, and should refer to *United States v. Simpson Paper Company,* D.J. Ref. No. 90-5-1-1-2529. The proposed settlement agreement may be examined at the office of the United States Attorney, 450 Golden Gate Avenue, San Francisco, California 94102, and at the Region IX Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the settlement agreement may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General.

[FR Doc. 87-28054 Filed 12-7-87; 8:45 am]

BILLING CODE 4401-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Alpha Cast, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 18, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 18, 1987.

The petitions filed in this case are available for inspection at the Ofice of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 23rd day of November 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Alpha Cast, Inc. (Teamsters)	Whitewater, WI	11/23/87	11/17/87	20,254	Castings.
Amfesco Duramil Industries (Workers)	Nedley, FL	11/23/87	11/5/87	20,255	Shoes.
Anchor Metals, Inc. (Workers)	Fort Madison, IA	11/23/87	11/13/87	20,256	Steel.
Andy's Sportswear, Inc. (ILGWU)	Boston, MA	11/23/87	11/17/87	20,257	Sportwear.
Britoil Ventures, Inc. (Workers)	Houston, TX	11/23/87	11/10/87	20,258	Oil and Gas.
Cipher Data Products, Inc. (Workers)	Garden Grove, CA	11/23/87	10/17/87	20,259	Type Drives.
Craddock-Terry Shoe, Corp. (Workers)	Blackstone, VA	11/02/87	10/02/87	20,260	Footwear.
Craddock-Terry Shoe, Corp. (Workers)	Chase City, VA	11/23/87	11/16/87	20,261	Footwear.
Craddock-Terry Shoe, Corp. (Workers)	Farmville, VA	11/23/87	11/16/87	20,262	Footwear.
Craddock-Terry Shoe, Corp. (Workers)	Gretna, VA	11/23/87	11/16/87	20,263	Footwear.
Eastland Woolen Mill, Inc. (Workers)	Orono, ME	11/23/87	11/4/87	20,264	Wool.
Eastland Woolen Mill, Inc. (Workers)	Clinton, ME	11/23/87	11/4/87	20,265	Wool.
Elliott Company (USWA)	Jeannette, PA	11/23/87	11/6/87	20,266	Compressors and Turbines.
ITT Telecom (Workers)	Milan, TN	11/23/87	11/9/87	20,267	Communications Equipment.
Malouf of Dallas (Workers)	Healdton, OK	11/23/87	11/6/87	20,268	Skirts and Pants.
Maxwell House Coffee (UF&CWU)	Hoboken, NJ	11/23/87	11/5/87	20,269	Coffee.
Milwaukee Valve Co. (IAMAW)	Milwaukee, WI	11/23/87	11/9/87	20,270	Valves.
Siemens Transmission System (Workers)	El Paso, TX	11/23/87	11/12/87	20,271	Telephone Equipment.
Sportswear, Inc. (ILGWU)	Boston, MA	11/23/87	11/10/87	20,272	Sportwear.
Umetco Minerals Corp. (Workers)	Blanding, UT	11/23/87	11/10/87	20,273	Uranium.
Young Radiator Company (UAW)	Racine, WI	11/23/87	11/11/87	20,274	Radiators.
Zenith Electronics Corp. (Company)	Glenview, IL	11/23/87	11/2/87	20,275	Televisions.
Zenith Electronics Corp. (Company)	Springfield, IL	11/23/87	11/2/87	20,276	Televisions.
Zenith Electronics Corp. (Company)	Melrose Park, IL	11/23/87	11/2/87	20,277	Televisions.
Zenith Electronics Corp. (Company)	Elk Grove Village, IL	11/23/87	11/2/87	20,278	Televisions.
Zenith Electronics Corp. Plant 2 (Co)	Chicago, IL	11/23/87	11/2/87	20,279	Televisions.
Zenith Electronics Corp. (Company)	Franklin Park, IL	11/23/87	11/2/87	20,280	Televisions.
Zenith Electronics Corp. (Company)	Northlake, IL	11/23/87	11/2/87	20,281	Televisions.
Zenith Electronics Corp. (Company)	Chicago, IL	11/23/87	11/2/87	20,282	Televisions.
Zenith Electronics Corp. (Company)	McAllen, TX	11/23/87	11/2/87	20,283	Televisions.
Zenith Electronics Corp. (Company)	El Paso, TX	11/23/87	11/2/87	20,284	Televisions.
Zenith Electronics Corp. (Company)	Douglass, AZ	11/23/87	11/2/87	20,285	Televisions.
Zenith Electronics Corp. (Company)	San Francisco, CA	11/23/87	11/2/87	20,286	Televisions.
Zenith Electronics Corp. (Company)	Sacramento, CA	11/23/87	11/2/87	20,287	Televisions.
Zenith Electronics Corp. (Company)	Santa Fe Springs, CA	11/23/87	11/2/87	20,288	Televisions.
Zenith Electronics Corp. (Company)	Secaucus, NJ	11/23/87	11/2/87	20,289	Televisions.
Zenith Electronics Corp. (Company)	Wallingford, CT	11/23/87	11/2/87	20,290	Televisions.
Zenith Electronics Corp. (Company)	Lenexa, KS	11/23/87	11/2/87	20,291	Televisions.
Zenith Electronics Corp. (Company)	Wichita, KS	11/23/87	11/2/87	20,292	Televisions.
Zenith Electronics Corp. (Company)	Springfield, MO	11/23/87	11/2/87	20,293	Televisions.
Zenith Electronics Corp. (Company)	Denver, CO	11/23/87	11/2/87	20,294	Televisions.
Zenith Electronics Corp. (Company)	Oklahoma City, OK	11/23/87	11/2/87	20,295	Televisions.
Baker Hughes, Inc. (Workers)	Houston, TX	11/23/87	11/12/87	20,296	Oil.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Indian Wells Oil Co. (Workers)	Tulsa, OK	11/23/87	11/16/87	20,297	Oil & Gas.

[FR Doc. 87-28108 Filed 12-7-87; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Workers Adjustment Assistance; BFI Communications Systems, Inc., et al.

Petitions hae been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 18, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 18, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 30th day of November 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
BFI Communications Systems, Inc. (workers)	Utica, NY	11/30/87	11/13/87	20,298	Telecommunication equipment.
Cartex Corporation (company)	Doylestown, PA	11/30/87	11/3/87	20,299	Auto seating.
General Electric Co. (workers)	Linton, IN	11/30/87	11/20/87	20,300	Motors.
Industrial Steel Products (workers)	Shreveport, PA	11/30/87	11/18/87	20,301	Steel.
King Knob Coal Co. (UMWA)	Morgantown, WV	11/30/87	11/20/87	20,302	Coal.
Monsanto Co. (USWA)	Kenilworth, NJ	11/30/87	11/18/87	20,303	Bottles.
Phila Gear Corp. (IAMAW)	King of Prussia, PA	11/30/87	11/15/87	20,304	Boxes.
Precision Catalytic Molding Co. (company)	Sommersville, CT	11/30/87	11/2/87	20,305	Steel.
Standard Oil Production Co. (workers)	Midland, TX	11/30/87	11/9/87	20,306	Crude oil.
Standard T. Chemical Co. (PDPA)	Linden, NJ	11/30/87	11/18/87	20,307	Electrical wiring.
Wilson Welding Co., Inc. (USWA)	Huntington, WV	11/30/87	11/10/87	20,308	Steel.

[FR Doc. 87-28109 Filed 12-7-87; 8:45 am]
BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-373 and 50-374]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Commonwealth Edison Co.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-11 and NPF-18 issued to Commonwealth Edison Company (the licensee), for operation of Lasalle County Station, Units 1 and 2 located in Lasalle County, Illinois.

These amendments correct an inconsistency between Technical Specification requirements regarding the Suppression Pool High Level Alarm in accordance with the licensee's application for amendment dated April 29, 1987. Technical Specfication 4.6.2.1.c.1 requires a setpoint of less than or equal to 26 feet 8 inches (equivalent to a plant elevation of 700 feet 0 inches) for the suppression pool high level alarm. Technical Specification Table 3.3.3-2 and the Updated Final Safety Analysis Report (UFSAR) Table 7.3-1, require a trip setpoint of less than or equal to 700 feet 1 inch and an allowable value of less than or equal to 700 feet 2 inches for Suppression Pool Water Level—High. Both of these alarm setpoints are below the maximum allowable Suppression Pool level of 26 feet 10 inches indicated in Technical Specification 3.6.2.1.a.1.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 7, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petititions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party of the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must saftisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Council—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller; Isham, Lincoln, and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 29, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Bethesda, Maryland this 20th day of November, 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87-28129 Filed 12-7-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 and 50-374]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Commonwealth Edison Co.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-11 and NPF-18 issued to Commonwealth Edison Company (the licensee), for operation of LaSalle County Station, Units 1 and 2 located in LaSalle County, Illinois.

The amendment would revise Technical Specifications 3.3.7.7, 3/4.3.7.7 and Technical Specifications Table 4.3.1.1-1 to permit the use of functioning channels of the traversing Incore Probe (TIP) System (five independent neutron detection units) when one or more of the TIP measurement locations are inaccessible or inoperable, due to system malfunction, in accordance with the licensee's application for amendment dated September 4, 1987. This will allow continued operation utilizing operable TIP measurement location data for required local power range monitor recalibrations and core thermal power monitoring and use of substitute TIP data from symetric locations or from computer modeling to be used as an input to the station's process computer.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 7, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petiton and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Isham, Lincoln, and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 4, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Bethesda, Maryland this 20th day of November 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87-28130 Filed 12-7-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District, (Cooper Nuclear Station); Exemption

I

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR-46 that authorizes operation of the Cooper Nuclear Station (the facility) at a steady state reactor power level not in excess of 2381 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Nemaha County, Nebraska. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.54(w)(1) of 10 CFR Part 50 was recently amended to require that the licensees of nuclear power reactors maintain a minimum insurance coverage for operating nuclear power plants in the sum of $1.06 billion. The new requirements became effective on October 5, 1987 and the regulations provide for a 60 day grace period in which a licensee could comply with the requirements.

By letter dated October 2, 1987, the licensee, by its attorney, requested a schedular exemption from the requirements of amended 10 CFR 50.54(w) until a satisfactory final order from a state or Federal court has been obtained and the licensee is able to obtain the necessary insurance policies from Nuclear Electric Insurance Limited (NEIL). Currently, the licensee maintains $585 million of property insurance obtained through American Nuclear Insurers and the Mutual Atomic Energy Reinsurance Pool. The only source of additional insurance to comply with the Commission's new regulations is NEIL. However, NEIL is a mutual company and under the provisions of the Nebraska Constitution, as interpreted by the Nebraska Supreme Court, there is considerable doubt as to whether the licensee may lawfully purchase insurance from NEIL. In an effort to satisfy the limitations of Nebraska law, effective on March 29, 1985, NEIL amended its charter and by-laws, together with a proposal to issue appropriate policy endorsements. Based upon NEIL's actions, the licensee submitted an application to NEIL for decontamination and property insurance. By letter from NEIL dated June 28, 1985, the licensee was advised NEIL would not issue a policy to the licensee until the licensee had secured a declaratory judgment from the Nebraska Supreme Court that non-voting membership in NEIL and the issuance of policies with appropriate endorsements would not violate the Nebraska Constitution. On July 1, 1985, the licensee, jointly with the Omaha Public Power District (the Districts), commenced an action for a declaratory judgment in the District Court of Lancaster County, Nebraska. The District Court issued its decision on December 1, 1986 in which it declined to grant a declaratory judgment. The Districts have appealed the ruling of the District Court to the Nebraska Supreme Court where the matter currently is pending. In the event the Nebraska Supreme Court ultimately refuses to grant a declaratory judgment that the Districts may, consistent with Nebraska law, purchase insurance from NEIL, the Districts assert they plan to commence an action for a declaratory judgment in the United States District Court in Nebraska and ask the Federal court to declare that the Commission's new regulations preempt any provisions of the Nebraska Constitution.

III

The NRC staff has reviewed the licensee's request for a schedular exemption from the amended requirements of 10 CFR 50.54(w)(1). The licensee has asserted, and the Commission has found, 52 FR 28966, that it is unable to provide equivalent protection in lieu of purchasing the NEIL coverage. NEIL coverage cannot be secured until a satisfactory final order from either a state or Federal court is obtained. For these reasons, the staff finds that the licensee has shown good

cause for the requested schedular exemption from the requirements of amended 10 CFR 50.54(w)(1). However, the staff does not believe the exemption should be for an indefinite period. Accordingly, the requested schedular exemption is acceptable for a period of one year from December 5, 1987. If an appropriate state or Federal court order has not been obtained by such date, the staff would give consideration to a new application for an exemption.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are justifying the exemption. The licensee has been making, and continues to make, a good faith effort to secure the necessary state or Federal court order. Upon securing the necessary court order, the licensee intends to purchase the insurance policy from NEIL which would put it in compliance with the new requirements of 10 CFR 50.54(w)(1).

Accordingly, the Commission hereby grants an exemption, as described in Section III above, from § 50.54(w)(1) of 10 CFR Part 50 to extend the date for acquiring the full amount of property insurance required by the Commission's regulations to no later than one year from December 5, 1987.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 45881).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this December 2, 1987.

[FR Doc. 87-28131 Filed 12-7-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District (Fort Calhoun Station, Unit 1); Exemption

I

Omaha Public Power District (the licensee) is the holder of Facility Operating License No. DPR-40 that authorizes operation of the Fort Calhoun Station, Unit 1 (the facility) at a steady state reactor power level not in excess of 1500 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Washington County, Nebraska. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.54(w)(1) of 10 CFR Part 50 was recently amended to require that the licensees of nuclear power reactors maintain a minimum insurance coverage for operating nuclear power plants in the sum of $1.06 billion. The new requirements became effective on October 5, 1987 and the regulations provide for a 60 day grace period in which a licensee could comply with the requirements.

By letter dated October 2, 1987, the licensee, by its attorney, requested a schedular exemption from the requirements of amended 10 CFR 50.54(w) until a satisfactory final order from a state or Federal court has been obtained and the licensee is able to obtain the necessary insurance policies from Nuclear Electric Insurance Limited (NEIL). Currently, the licensee maintains $585 million of property insurance obtained through American Nuclear Insurers and the Mutual Atomic Energy Reinsurance Pool. The only source of additional insurance to comply with the Commission's new regulations is NEIL. However, NEIL is a mutual company and under the provisions of the Nebraska Constitution, as interpreted by the Nebraska Supreme Court, there is considerable doubt as to whether the licensee may lawfully purchase insurance from NEIL. In an effort to satisfy the limitations of Nebraska law, effective on March 29, 1985, NEIL amended its charter and by-laws, together with a proposal to issue appropriate policy endorsements. Based on NEIL's actions, the licensee submitted an application to NEIL for decontamination and property insurance. By letter from NEIL dated June 28, 1985, the licensee was advised NEIL would not issue a policy to the licensee until the licensee had secured a declaratory judgment from the Nebraska Supreme Court that non-voting membership in NEIL and the issuance of policies with appropriate endorsements would not violate the Nebraska Constitution. On July 1, 1985, the licensee, jointly with Nebraska Public Power District (the Districts), commenced an action for a declaratory judgment in the District Court of Lancaster County, Nebraska. The District Court issued its decision on December 1, 1986 in which it declined to grant a declaratory judgment. The Districts have appealed the ruling of the District Court to the Nebraska Supreme Court where the matter currently is pending. In the event the Nebraska Supreme Court ultimately refuses to grant a declaratory judgment that the Districts may, consistent with Nebraska law, purchase insurance from NEIL, the Districts assert they plan to commence an action for a declaratory judgment in the United States District Court in Nebraska and ask the Federal court to declare that the Commission's new regulations preempt any provisions of the Nebraska Constitution.

III

The NRC staff has reviewed the licensee's request for a schedular exemption from the amended requirements of 10 CFR 50.54(w)(1). The licensee has asserted, and the Commission has found, 52 FR 28966, that it is unable to provide equivalent protection in lieu of purchasing the NEIL coverage. NEIL coverage cannot be secured until a satisfactory final order from either a state or Federal court. For these reasons, the staff finds that the licensee has shown good cause for the requested schedular exemption from the requirements of amended 10 CFR 50.54(w)(1). However, the staff does not believe the exemption should be for an indefinite period. Accordingly, the requested schedular exemption is acceptable for a period of one year from December 5, 1987. If an appropriate state or Federal court order has not been obtained by such date, the staff would give consideration to a new application for an exemption.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption. The licensee has been making, and continues to make, a good faith effort to secure the necessary state or Federal court order. Upon securing the necessary court order, the licensee intends to purchase the insurance policy from NEIL which would put it in compliance with the new requirements of 10 CFR 50.54(w)(1).

Accordingly, the Commission hereby grants an exemption, as described in Section III above, from § 50.54(w)(1) of 10 CFR Part 50 to extend the date for

acquiring the full amount of property insurance required by the Commission's regulations to no later than one year from December 5, 1987.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 45881). This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland this December 2, 1987.

[FR Doc. 87-28132 Filed 12-7-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Consideration of Issuance of Amendment To Facilitate Operating License and Opportunity for Prior Hearing; Toledo Edison Co. and the Cleveland Electric Illuminating Co.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to Safety Systems Instrumentation and Containment Isolation Valves in accordance with Toledo Edison Company's application dated October 27, 1987. Specifically, the proposed amendment would: (1) Revise TS section 3/4.3.2, Table 3.3-5, to delete reference to the Makeup System as containing valves which receive a Safety Features Actuation Signal (SFAS), and (2) revise TS section 3/4.6.3, Table 3.6-2, to delete containment isolation valve MU 33 (Penetration 19) from section A of the table and add valves MU 6422 (Penetration 19) and MU 6421 (Penetration 50) to section C of the table. (Valve MU 33 is redesignated as MU 6422).

The proposed modifications will provide for enhanced capability for feed and bleed cooling of the Davis-Besse Nuclear Power Station.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 7, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to particiate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (Petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 27, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 1st day of December, 1987.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 87-28133 Filed 12-7-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on the Medical Uses of Isotopes; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) has planned a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) to discuss quality assurance in radiation therapy and other issues pertaining to the medical use of byproduct material.

Date and Time of Meeting: Tuesday, January 26, 1988, at 9:00 a.m.

Location: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Material Licensing Branch 396-SS, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4108.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is proposing to amend its regulations concerning the medical use of byproduct material to require its medical licensees to implement certain quality assurance steps designed to reduce the chance and severity of therapy misadministrations. This proposed action is necessary to provide better patient safety and a basis for enforcement action in cases of therapy misadministration. The proposed regulations would primarily affect hospitals, clinics, and individual physicians.

The proposed rule was published in the **Federal Register** on October 2, 1987 (52 FR 36942). The NRC is also requesting comments on the need for a comprehensive quality assurance program requirement. This request was also published in the **Federal Register** on October 2, 1987 (52 FR 36949).

The purpose of the meeting is to obtain ACMUI and public comment on the following topics:

- The quality assurance notices
- The quality assurance activities of scientific and professional organizations
- Alternatives for improved regulatory oversight of the medical use of byproduct material
- Regulatory issues that may need to be addressed in the future

Other topics may be discussed if time permits.

Conduct of the Meeting: Mr. Richard Cunningham, Director, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, will serve as Chairman at the meeting. Mr. Cunningham will conduct the meeting in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting.

1. Persons who want to make oral statements should inform Mr. Cunningham in writing by Tuesday, January 5, 1988. Statements must pertain to the topics at hand. The Chairman will rule on requests to make oral statements. Opportunity for members of the public to make oral statements, within the time available, will be based on the chronological order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements may be supplemented by detailed written statements for the record. Rulings and time allotments may be obtained by calling Mr. Cunningham at (301) 427-4485 between 9:00 a.m. and 5:00 p.m. EST on Tuesday, January 19, 1988.

2. At the meeting, questions may be asked only by Committee members, NRC consultants, and NRC staff.

3. The transcript of the meeting and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555 on or about February 29, 1988.

4. Seating for the public will be on a first come-first served basis.

The meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), Federal Advisory Committee Act (Pub. L. 92-45), Executive Order 11769, and the Commission's regulations in Title 10, Code of Federal Regulations, Part 7.

Dated at Washington, DC, this 3rd day of December 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87-28135 Filed 12-7-87; 8:45 am]

BILLING CODE 7590-01-M

Privacy Act of 1974; Report of New System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Establishment of new system of records.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish a new system of records, NRC-35, Drug Testing Program Records—NRC, in response to the mandate in Executive Order 12564, "Drug-Free Federal Workplace," that President Reagan signed on September 15, 1986. Because the NRC has a major responsibility for protecting the health and safety of the public and the national security, it is strongly committed to the goal of establishing and maintaining a work environment that is free from the ill effects of drug abuse.

DATES: The proposed new system of records will take effect without further notice on January 7, 1988, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may be hand delivered to Room 1121, 1717 H Street, NW., Washington, DC, between 7:30 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Raymond J. Brady, Director, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-4100.

SUPPLEMENTARY INFORMATION: The NRC drug testing program is being established in accordance with section 3 of the September 15, 1986, Executive Order 12564 of the President of the United States and the Office of Personnel Management guidelines in FPM Letter 792-17, issued on November 28, 1986, and FPM Letter 792-17, issued on March 9, 1987.

A report for this proposed new system of records, required by 5 U.S.C. 552a(o), as implemented by Office of Management and Budget Circular A-130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on September 14, 1987, with a request for an expedited 30-day review.

The comment period expired on October 14, 1987. The NRC received one letter of comment from Congress, which took issue with the NRC's proposed external routine use. The commenter stated that inclusion of all six routine uses—five internal and one external—was "inappropriate and inconsistent with the statute." After careful review of the comments and consultation with the Congressional staff, the NRC agrees with the comment and is dropping the

external routine use, while retaining the proposed internal uses.

1. The following new system of records, NRC-35, Drug Testing Progam Records—NRC, is being proposed for adoption by the NRC.

NRC-35

SYSTEM NAME:

Drug Testing Program Records—NRC.

SYSTEM LOCATION:

Primary system: Division of Security, Office of Administration and Resources Management, 7735 Old Georgetown Road, Bethesda, Maryland.

Duplicate systems: Duplicate systems may exist, in whole or in part, at the locations listed in Addendum 1, Parts 1 and 2; and at contractor testing laboratories and collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding results of the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. Executive Order 12564; September 15, 1986;

b. Pub. L. 100-71, "Supplemental Appropriations for the Homeless Act of 1987," Amendment No. 416, July 11, 1987.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Security and NRC management:

a. To identify substance abusers within the agency;

b. To initiate counselling and/or rehabilitation programs;

c. To take personnel actions;

d. To take personnel security actions; and

e. For statistical purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders, on index cards, and on computer printouts for documentary information. Specimens are maintained in appropriate environments.

RETRIEVABILITY:

Records are indexed and accessed by name, social security account number, testing position number, specimen number, drug testing laboratory accession number, or a combination thereof.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Security are stored in an approved security container under the immediate control of the Director, Division of Security, or designee. Records at other NRC locations and in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

RETENTION AND DISPOSAL:

a. Test results, whether negative or positive, and other drug screening records filed in the Division of Security or at the locations listed in Addendum I, Parts 1 and 2, will be retained and retrieved as indicated under the Retrievability category. When an individual terminates employment or a contractual/consultant relationship with the NRC, negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the administrative/judicial disposition and/or appeal rights of the tested party, at which time they will be destroyed by shredding, or by other approved disposal methods.

b. Test results, whether negative or positive, on file in contractor testing laboratories, will be maintained for a minimum of two years in the laboratories; or, upon instructions provided by the Division of Security, will be transferred to the Division of Security when the contract is terminated or whenever an individual, previously subjected to urinalysis by the laboratory, terminates employment or a contractual/consultant relationship with the NRC. Records received form the laboratories by the Division of Security will be incorporated into other records in the system or, if the individual has terminated, those records reflecting negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the administrative/judicial disposition and/or appeal rights of the tested party, at which time they will be destroyed by shredding, or by other approved disposal methods.

c. Negative specimens will be destroyed according to laboratory/contractor procedures.

d. Positive specimens will be maintained through the administrative/judicial disposition and/or appeal rights of the tested party.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, and contractors who have been identified for drug testing, who have been tested, or who have admitted abusing drugs prior to being tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing, including but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and

(I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

Dated at Bethesda, MD, this 1st day of December 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 87-28221 Filed 12-7-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1136

Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 7, 1988 in Room CR II-6 at the Engineering Center of the University of Colorado, Boulder, Colorado. The meeting will begin at 5:00 p.m.

Study Group 5 deals with propagation of radio waves (including radio noise) at the surface of the earth, through the non-ionized regions of the earth's atmosphere, and in space where the effect of ionization is negligible. The purpose of the meeting will be to discuss plans for the international meeting of Study Group 5 in 1988 and procedures for review of input documents from other administrations.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Dated: November 30, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

FR Doc. 87-28093 Filed 12-7-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 2, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 8697.

Type of Review: New Collection.

Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

Description: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under International Revenue Code section 460(b)(3). IRS uses Form 8697 to determine if the interest has been figured correctly.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 6,799 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

Clearance Officer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-28076 Filed 12-7-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 2, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0805.

Form Number: 5472.

Type of Review: Resubmission.

Title: Information Return of a Foreign Owned Corporation.

Description: Form 5472 is used to report the activities between domestic corporations and foreign corporations that have a trade or business in the U.S. and that are owned by foreign persons. The form is used to report the activities between the foreign owned foreign corporation and foreign persons related to the activities. The IRS uses Form 5472 to determine if there are any income tax liabilities for the persons related to the activity.

Respondents: Businesses or other for-profit.

Estimated Burden: 340,421 hours.

Clearance Officer: Garrick Shear (202) 535,4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-28077 Filed 12-7-87; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 235
Tuesday, December 8, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COUNCIL ON ENVIRONMENTAL QUALITY:.

DATE, TIME, PLACE: Wednesday, December 16, 1987, 2:00 p.m., Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED:.

1. The Council on Environmental Quality has held a series of public meetings on the issues of stratospheric ozone depletion and global warming. To date, the Council has heard from experts concerning the scientific aspects of the problem and the human health and biological impacts.

At this meeting, the Counci will be hearing from Dr. Robert C. Worrest, Professor (Senior Researcher), Orgeon State University. Dr. Worrest will be addressing the aquatic impacts of stratospheric ozone depletion and global warming.

2. Other matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503; Telephone: (202) 395-5754..

A. Alan Hill,

Chairman.

[FR Doc. 87-28210 Filed 12-4-87; 2:51 pm]

BILLING CODE 3125-01-M

FEDERAL COMMUNICATIONS COMMISSION

December 3, 1987.

FCC To Hold Open Commission Meeting, Thursday, December 10, 1987

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 10, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: In the Matter of Inquiry into Policies to be followed in the Authorization of Common Carrier Facilities to Meet Caribbean Region Telecommunications Needs During the 1985-1995 Period. Summary: The Commission will consider whether to adopt a Report and Order concerning the authorization of a Transcaribbean digital optical fiber cable linking Florida, Puerto Rico, Jamaica, the Dominican Republic and Colombia.

Common Carrier—2—Title: Basic Exchange Telecommunications Radio Service. Summary: The Commission will consider whether to adopt changes to Part 22 of its rules to allow the use of certain frequencies for the provision of a Basic Exchange Telecommunications Service (BETRS).

Common Carrier—3—Title: Comsat Rate Investigation CC Docket Nos. 80-634 and 85-268. Summary: The Commission will consider a Memorandum Opinion and Order addressing petitions for reconsideration of, and Comsat's response to, the Common Carrier Bureau's Order to Show Cause in the Comsat Rate Investigation, CC Docket Nos. 80-634 and 85-268.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: December 3, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-28206 Filed 12-4-87; 1:52 pm]

BILLING CODE 6712-01-M

FEDERAL ENERGY REGULATORY COMMISSION

December 2, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: December 9, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission: It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 868th Meeting—December 9, 1987, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 6568-008, Delmar Wagner
CAP-2.
Project No. 2205-007, Central Vermont Public Service Corporation
CAP-3.
Project No. 9231-002, Scott Paper Company
CAP-4.
Project No. 10424-001, Energy Alternatives
Project No. 10425-001, Steven J. Wright
CAP-5.
Project No. 3195-023, Sayles Hydro Associates
CAP-6.
Project No. 7266-010, Colorado Hydro-Power Corporation
CAP-7.
Project No. 3449-009, City of North Little Rock, Arkansas
CAP-8.
Project No. 405-021, Philadelphia Electric Power Company and The Susquehanna Power Company
CAP-9.
Project Nos. 3285-003 and 004, Trinity River Authority of Texas
CAP-10.
Project No. 3795-003, Thermalito Irrigation District and Table Mountain Irrigation District
CAP-11.
Project No. 6623-001, Eric R. Jacobson
CAP-12.
Project No. 10057-000, JDJ Energy Company
CAP-13.
Project No. 8468-000, Clearwater Hydro Limited Partnership
Project No. 8455-000, ATPAC Corporation
CAP-14.
Project No. 2756-003, City of Burlington Electric Department
Project No. 3101-001, City of Winooski
Project No. 9413-001, Winooski One Partnership
CAP-15.
Docket No. EL88-1-000, Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company
Docket Nos. ER88-30-000, ER88-31-000, ER88-32-000, ER88-33-000 and ER88-34-000, Indiana Michigan Power Company
CAP-16.
Docket Nos. ER87-581-000 and ER84-705-001, *et al.*, Boston Edison Company
CAP-17.
Docket No. ER87-488-001, Consolidated Edison Company of New York, Inc.
CAP-18.
Docket No. ER87-35-001, Southern California Edison Company
CAP-19.
Omitted
CAP-20.

Docket No. ER86-645-002, Boston Edison Company
CAP-21.
Docket No. ER87-411-001, The Montana Power Company
CAP-22.
Docket Nos. ER79-97-010, ER79-97-011 and ER79-97-012, Alamito Company
CAP-23.
Docket Nos. EF87-2011-004 and EF87-2021-002, United States Department of Energy—Bonneville Power Administration
CAP-24.
Docket No. ER87-593-000, Central Hudson Gas & Electric Corporation
CAP-25.
Docket No. ER87-240-001, Carolina Power & Light Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA85-63-003, Long Island Lighting Company
CAM-2.
Docket No. FA86-72-001, Allegheny Generating Company
CAM-3.
Docket No. RM87-6-000, Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies
CAM-4.
Docket No. RM87-36-001, Interpretation of Comprehensive Plans Under Section 3 of the Electric Consumers Protection Act
CAM-5.
Docket No. RM87-34-053, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
CAM-6.
Docket No. RM87-7-001 and 002, Compression Allowances and Protest Procedures Under NGPA Section 110
CAM-7.
Docket No. GP87-73-000, State of Louisiana Department of Natural Resources
CAM-8.
Docket No. GP87-71-000, Railroad Commission of Texas, Brown No. 1, NGPA Section 102, JD No. 80-45067 and H.E. Wilcox No. 1, NGPA Section 108, JD No. 80-44765
CAM-9.
Docket No. GP86-11-001, Pogo Producing Company
CAM-10.
Docket No. IN86-5-003 (Phase I), Mobile Exploration and Producing North America, Inc.
CAM-11.
Docket No. RA85-5-001, Little America Refining Company
CAM-12.
Docket No. RO86-6-000, Erickson Refining Corporation
Docket No. RO86-9-000, Fuel Oil Supply Corporation
Docket No. RO85-23-000, West Texas Marketing Corporation
Docket No. RO85-20-000, Benton Pruet d/b/a P&R Trading Company
Docket No. RO87-2-000, RFB Petroleum, Inc.
Docket No. RO87-6-000, Petrade International, Inc.
Docket No. RO87-7-000, Tootle Petroleum, Inc.
Docket No. RO86-22-000, Mapco International, Inc.
Docket No. RO86-24-000, William T. Tootle
Docket No. RO87-16-000, Doram Energy, Inc. and Damson Oil Corporation
Docket No. RO86-27-000, Traco Petroleum Company
Docket No. RO87-5-000, Kaiser Aluminum International Corporation
Docket No. RO85-21-000, Hudson Oil Company, Inc.
Docket No. RO86-26-000, Beta Energy Corporation and James R. Blakemore
Docket No. RO86-16-000, Osborne Energy Corporation and E.O. White
Docket No. RO86-4-001, Knox Oil of Texas, Inc. and Michael L. Reed
Docket No. RO87-12-000, Corum Energy Corporation
Docket No. RO86-13-000, Merit Petroleum, Inc.
Docket No. RO87-14-000, T&M Petroleum Corporation
Docket No. RO87-19-000, Pel-Star Energy, Inc.
Docket No. RO87-23-000, Hideca Petroleum Corporation
Docket No. RO87-24-000, National Hydrocarbons Group, Inc.
Docket No. RO87-28-000, Lantern Petroleum Corporation

Consent Gas Agenda

CAG-1.
Docket No. RP88-25-000, South Georgia Natural Gas Company
CAG-2.
Docket No. TA88-1-43-001, Williams Natural Gas Company
CAG-3.
Docket No. TA85-2-37-021, Northwest Pipeline Corporation
CAG-4.
Docket No. RP84-82-002, Tarpon Transmission Company
CAG-5.
Docket No. RP86-45-019, El Paso Natural Gas Company
CAG-6.
Docket No. RP82-114-012, Williams Natural Gas Company (formerly Northwest Central Pipeline Company)
CAG-7.
Docket No. RP85-177-043, Texas Eastern Transmission Corporation
CAG-8.
Docket No. RP88-1-002, Bayou Interstate Pipeline System
CAG-9.
Docket No. RP82-55-031, Transcontinental Gas Pipe Line Corporation
CAG-10.
Docket No. RP82-55-032, Transcontinental Gas Pipe Line Corporation
CAG-11.
Docket Nos. TA87-4-49-005, CP82-487-015, *et al.*, TA87-3-49-002 and TA87-4-49-003, Williston Basin Interstate Pipeline Company
CAG-12.
Docket Nos. TA87-1-37-011, TA87-1-37-011 and TA87-1-37-009, Northwest Pipeline Corporation
CAG-13.
Omitted.
CAG-14.
Docket Nos. RP86-63-001 and RP86-114,000, Southern Natural Gas Company
CAG-15.
Docket No. RP87-26-010, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG-16.
Docket No. RP87-71-001, Gas Research Institute
CAG-17.
Docket Nos. ST87-2155-001 and ST87-2229-001, Seagull Shoreline System
CAG-18.
Docket Nos. RP86-33-001 and RP86-91-001, Midwestern Gas Transmission Company
CAG-19.
Docket Nos. RM87-3-000, *et al.*, and RP87-92-000, Williston Basin Interstate Pipeline Company
CAG-20.
Docket No. TA87-3-28-000, Panhandle Eastern Pipe Line Company
CAG-21.
Docket No. RP85-193-003, North Penn Gas Company
CAG-22.
Docket No. RP87-93-000, Columbia Gas Transmission Corporation
CAG-23.
Docket Nos. RP85-58-000, RP85-129-000 and RP85-130-000, El Paso Natural Gas Company
CAG-24.
Omitted
CAG-25.
Docket Nos. CP86-589-002 and RP86-104-003, Colorado Interstate Gas Company
CAG-26.
Docket No. RP87-41-000, Alabama-Tennessee Natural Gas Company
CAG-27.
Docket Nos. ST87-3269-000, ST87-3271-000, ST84-773-000, *et al.*, and ST84-803-000, *et al.*, Delhi Gas Pipeline Corporation
CAG-28.
Docket Nos. ST87-3318-000, ST87-3319-000, ST87-3320-000, ST87-3321-000 and ST87-3322-000, Lear Gas Trnasmission Company
CAG-29.
Docket Nos. CI87-548-000 and CI87-558-000, Conoco Inc.
CAG-30.
Docket No. CS71-520-000, Jack J. Grynberg
CAG-31.
Docket No. CI83-357-002, Pan Eastern Exploration Company
CAG-32.
Docket No. CI87-358-000, Pennzoil Company and Pennzoil Gas Marketing Company
Docket No. CI87-359-000, Pennzoil Company
Docket No. RP74-87-000, Pennzoil Company and United Gas Pipe Line Company
CAG-33.
Docket Nos. CP87-467-000, 001, CP86-474-001, 002, CP86-422-001 and CP86-456-001, Great Lakes Gas Transmission Company

Docket Nos. CP79-467-001 and 014, ANR Pipeline Company

CAG-34.
Docket No. CP85-437-006; Mojave Pipeline Company
Docket No. CP87-552-000, Kern River Gas Transmission Company
Docket No. CP87-479-001, Wyoming-California Pipeline Company

CAG-35.
Docket No. CP86-146-001, Consolidated Gas Transmission Corporation
Docket No. CP86-597-002, Transcontinental Gas Pipe Line Corporation

CAG-36.
Docket No. CP85-621-006, ANR Pipeline Company

CAG-37.
Docket No. CP87-112-001, Transwestern Pipeline Company and H.L. Brown, Jr.

CAG-38.
Docket No. RP86-115,-012, Trunkline Gas Company

CAG-39.
Docket No. CP87-368-001, Trunkline Gas Company

CAG-40.
Docket No. CP87-198-001, Black Marlin Pipeline Company

CAG-41.
Docket No. CP83-335-191, Williston Basin Interstate Pipeline Company

CAG-42.
Docket No. TC87-9-001, Natural Gas Pipeline Company of America

CAG-43.
Docket Nos. CP86-177-008, CP87-259-001 and CP87-532-001, Northwest Pipeline Corporation

CAG-44.
Docket No. CP86-538-001, Granite State Transmission, Inc.

CAG-45.
Docket No. CP80-82-007, ANR Pipeline Company and Texas Eastern Transmission Corporation

CAG-46.
Docket Nos. CP87-159-001, 002, 003, 004, 005, CP87-304-000, 001, 002, and 003, Pacific Gas Transmission Company

CAG-47.
Docket No. CP87-21-001, Pacific Gas Transmission Company

CAG-48.
Docket No. CP85-186-004, Valero Interstate Transmission Company
Docket Nos. CI85-206-002, CI85-207-002 and CI85-213-002, Shell Western E&P, Inc.

CAG-49.
Docket No. CP86-676-000, Equitable Gas Company, a Division of Equitable Resources, Inc. and Equitable Transmission Company

CAG-50.
Docket No. CP87-429-000, Mississippi River Transmission Corporation

CAG-51.
Docket No. CP87-423-000, United Gas Pipe Line Company

CAG-52.
Docket No. CP87-449-000, Northwest Pipeline Corporation

CAG-53.
Docket No. CP87-164-000, Great Lakes Gas Transmission Company

CAG-54.
Docket No. CP87-161-000, Northwest Pipeline Corporation

CAG-55.
Docket No. CP87-135-000, Transwestern Pipeline Company

CAG-56.
Omitted

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket Nos. ER85-646-001 and ER85-647-001 (Phase I), New England Power Company
Docket Nos. ER85-646-005 and ER85-647-003 (Phase II), New England Power Company. Opinion and order determining just and reasonable rates, including issues of appropriate treatment for abandoned plant costs (Phases I and II).

ER-2.
Docket Nos. ER85-571-001 and ER85-486-001 (Phase I Mobile-Sierra), Utah Power & Light Company. Opinion and order determining just and reasonable rates.

ER-3.
Docket No. EC88-2-000, Utah Power & Light Company. Order on a proposed corporate merger.

Miscellaneous Agenda

M-1.
Reserved

M-2.
Reserved

M-3.
Docket No. RM87-15-000, Regulations Implementing the National Environmental Policy Act of 1969. Final Rule.

M-4.
Omitted

M-5.
Docket No. SA87-2-001, Pogo Producing Company
Docket No. SA87-3-001, Mobil Exploration and Producing North America Inc. and Mobil Producing Texas & New Mexico Inc.
Docket No. SA87-4-001, Mobil Exploration and Producing North America Inc. and Mobil Oil Exploraton & Producing Southeast Inc.
Docket No. SA87-6-001, Shell Offshore Inc. and Shell Oil Company
Docket No. SA87-11-001, Phillips Petroleum Company
Docket No. SA87-16-001, Columbia Gas Development Corporation
Docket No. SA87-27-001, Conoco Inc.
Docket No. SA87-28-001, Samedan Oil Corporation
Docket No. SA87-30-001, Sun Exploration and Production Company
Docket No. SA86-26-001, Edwin L. Cox. Order on appeals from staff action.

I. Pipeline Rate Matters

RP-1(A).
Docket No. RP87-77-000, Great Lakes Gas Transmission Company. Whether company has adequately responded to the Commission's show cause order.

RP-1(B).
Docket Nos. TA87-1-51-02 and TA86-6-51-004, Great Lakes Gas Transmission Company. Whether Opinion Nos. 256 and 256-A should be applied to Great Lakes.

RP-1(C).
Docket Nos. TA87-2-51-003, Great Lakes Gas Transmission Company. Whether Opinion Nos. 256 and 256-A should be applied to Great Lakes.

RP-1(D).
Docket No. TA87-4-51-002, Great Lakes Gas Transmission Company. Whether Opinion Nos. 256 and 256-A should be applied to Great Lakes.

RP-1(E).
Docket No. TA87-5-51-002, Great Lakes Gas Transmission Company. Whether Opinion Nos. 256 and 256-A should be applied to Great Lakes.

RP-1(F).
Docket No. TA87-6-51-002, Great Lakes Gas Transmission Company. Whether Opinion Nos. 256 and 256-A should be applied to Great Lakes.

RP-1(G).
Docket No. TA87-7-51-001, Great Lakes Gas Transmission Company. Whether Opinion Nos. 256 and 256-A should be applied to Great Lakes.

RP-1(H).
Docket No. CP86-696-001, Great Lakes Gas Transmission Company. Appeal of a staff action that granted a certificate to transport gas.

RP-2.
Docket Nos. ST83-429-001, ST81-105-002, ST81-106-001, ST82-193-001, ST82-193-002, ST82-194-001, ST82-195-001, ST82-195-002, ST83-50-001, ST83-327-000, ST83-327-001, ST84-101-000, ST84-101-001, ST84-524-000, ST86-81-000, ST86-650-000, ST86-651-000, ST86-661-000, ST86-663-000, ST83-141-001, ST83-441-000, ST83-441-001, ST83-429-000, ST83-481-000, ST83-634-000, ST83-634-001, ST84-2-000, ST84-218-000, ST84-219-000, ST84-728-000, ST84-1138-000, ST85-70-000, ST85-71-000, ST85-385-000, ST85-529-000, ST85-530-000, ST85-701-000, ST85-815-000, ST85-912-000, ST85-914-000, ST85-1116-000, ST85-1221-000, ST85-1224-000, ST85-1607-000, ST85-1608-000, ST85-1707-000, ST86-94-000, ST86-156-000, ST86-208-000, ST86-223-000, ST86-750-000, and ST86-751-000, Lear Petroleum Corporation (formerly Producer's Gas Company). Opinion and order on NGPA section 311 intrastate rates.

II. Producer Matters

CI-1.
Reserved.

III. Pipeline Certificate Matters

CP-1.
Omitted

CP-2.
Docket No. CP87-507-000, North Penn Gas Company. Declaratory order on NGPA section 311 authority to construct facilities.

CP-3.

Docket Nos. CP83-75-000, 001 and 002, Consolidated System LNG Company
Docket Nos. CP80-33-001 and 002, Columbia LNG Corporation. Contested settlement of proposal to transfer an undivided one half ownership interest in a liquefied natural gas facility.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-28149 Filed 12-4-87; 9:54 am]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, December 14, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary action) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28219 Filed 12-4-87; 3:35 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION:

DATE: Weeks of December 7, 14, 21, and 28, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 7

Thursday, December 10

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 14—Tentative

Thursday, December 17

9:30 a.m.
Periodic Briefing on Status of Operating Reactors and Fuel Facilities (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 21—Tentative

Tuesday, December 22

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Wednesday, December 23

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 28—Tentative

No Commission Meetings

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

December 3, 1987.

[FR Doc. 87-28136 Filed 12-3-87; 4:40 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 52, No. 235
Tuesday, December 8, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No. 84.015]

Invitation of Applications for New Awards; National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies Fellowships Program for Fiscal Year 1988

Correction

In notice document 87-27501 beginning on page 45675 in the issue of Tuesday, December 1, 1987, make the following correction:

On page 45676, in the second column, the deadline paragraph should read as follows:

Deadline for Transmittal of Applications: February 1, 1988.

Applications Available: December 9, 1987.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-08-4212-10]

Realty Action; Proposed Noncompetitive Agricultural Leases on Public Land in Yuma County, AZ, and Riverside County, CA

Correction

In notice document 87-27135 beginning on page 45253 in the issue of Wednesday, November 25, 1987, make the following correction:

On page 45254, in the first column, in the paragraph beginning with "These parcels", in the second line, "for a district" should read "for a direct".

BILLING CODE 1505-01-D

Federal Register

Tuesday
December 8, 1987

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-23]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at five locations: Abilene Municipal Airport, TX; Amarillo International Airport, TX; Dyess AFB, TX; Lexington Blue Grass Airport, KY; and Roanoke Regional/Woodrum Field, VA. The locations designated, with the exception of Dyess AFB, TX, are public airports at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 92 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On July 24, 1987, the FAA proposed to designate ARSA's at Abilene Municipal Airport, TX; Amarillo International Airport, TX; Dyess AFB, TX; Lexington Blue Grass Airport, KY; and Roanoke Regional/Woodrum Field, VA, (52 FR 27976). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The FAA received seven comments on the NPRM. Three commenters supported the proposal and four commenters offered objections.

The Soaring Society of America (SSA) submitted a number of objections to the basic ARSA program. All comments objecting to the ARSA program were considered during the rulemaking for the ARSA rule which was published in the **Federal Register** on March 6, 1985 (50 FR 9252).

SSA urged the FAA to withdraw the Dyess AFB ARSA proposal on the basis that Dyess AFB is not currently served by a TRSA and the FAA has not published the ARSA establishment criteria in a public forum. Dyess AFB currently is adjacent to and underlies the Abilene TRSA. Furthermore, ARSA establishment criteria have been developed and were adopted as an FAA Directive on July 14, 1986. Dyess AFB qualifies for ARSA designation under these criteria. Therefore, in the absence of any compelling justification to the contrary, the FAA is proceeding with the establishment of an ARSA at that location.

SSA, though not objecting to the Roanoke ARSA, stated that there was a need to ensure access to local ridge and thermal soaring areas through local agreements. The FAA, in the initial rulemaking, recognized the need for local agreements to make the ARSA program adaptable to local conditions and needs. The Roanoke Facility Manager is more than willing to negotiate with the users in the event the users discover that their needs are not being met.

Another commenter suggested that the traffic at Roanoke does not warrant an ARSA. Roanoke became an ARSA candidate based on the NAR Recommendation 1-2.2.6 which the FAA adopted and published in the **Federal Register** (50 FR 9257), which states all airports, excluding TCA locations, with an operational airport traffic control tower and currently contained within a TRSA serviced by Level III, IV or V radar approach control facility shall have an ARSA designated; unless a study indicates that such designation is inappropriate for a particular location.

The same commenter suggested that it would be hazardous to vector VFR aircraft in marginal VFR conditions due to the surrounding terrain. Stage III Service is currently being provided at Roanoke where 95 percent of the affected aircraft are currently participating. This program provides vectors for sequencing and separation to participating VFR aircraft. Also, pilots operating VFR continue to operate under see-and-avoid responsibility. Therefore, we find there will be no derogation of safety.

Additionally, the commenter suggested many VFR aircraft flying through the valley will be forced into a hazardous position over terrain to circumnavigate the ARSA. The NAR recommendation of placing the ceiling of the ARSA 4,000 feet above airport elevation was intended to make it easy to fly over the top of the ARSA, well above local terrain, and at the same time ensure that aircraft landing at and departing the primary airport are provided with optimum safety.

A commenter objected to the Abilene ARSA stating that the location did not warrant an ARSA based on traffic volume. The Abilene location became a candidate based on the NAR Recommendation 1-2.2.6 which the FAA adopted and published in the **Federal Register** (50 FR 9257).

Finally, a commenter on the Abilene ARSA suggested that the cutout for Elmdale needed to be modified to accommodate a safe climb and turn to avoid the ARSA while departing south at Elmdale. A review of the recommendation disclosed that the wrong radial had been used in the description. Therefore, we have changed the radial in the description from the proposed 082° to the 103°/283°.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Abilene Municipal Airport, TX; Amarillo International Airport, TX; Dyess AFB, TX; Lexington Blue Grass Airport, KY; and Roanoke Regional/Woodrum Field, VA. Each location designated, with the exception of Dyess AFB, is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation: (1) Is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Abilene Municipal Airport, TX [New]

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of the Abilene Municipal Airport (lat. 32°24'40" N., long. 99°40'54" W.), excluding that airspace from the surface to 3,600 feet MSL east of long. 99°39'00" W., and north of the Abilene VORTAC 103°/283° radial within 5 miles of the airport; and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport north of the Abilene VORTAC 103°/283° radial; and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport south of the Abilene VORTAC 103°/283° radial. This airport radar service area is effective during the specific days and hours of operation of the Abilene Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Amarillo International Airport, TX [New]

That airspace extending upward from the surface to and including 7,600 feet MSL within a 5-mile radius of the Amarillo

International Airport (lat. 35°13'16" N., long. 101°42'37" W.); and that airspace extending upward from 4,800 feet MSL to and including 7,600 feet MSL within a 10-mile radius of the airport, excluding any airspace contained within Prohibited Area P-47. This airport radar service area is effective during the specific days and hours of operation of the Amarillo Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Dyess AFB, TX [New]

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of Dyess AFB (lat. 32°25'12" N., long. 99°51'12" W.); and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of Dyess AFB north of the Abilene VORTAC 103°/283° radials: and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL, within a 10-mile radius of the Dyess AFB and south of the Abilene VORTAC 103°/283° radials. This airport radar service area (ARSA) excludes any airspace included within the Abilene Municipal Airport, TX, ARSA. This ARSA is effective during the specific days and hours of operation of the Abilene Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Lexington Blue Grass Airport, KY [New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Blue Grass Airport (lat. 38°02'12" N., long. 84°36'21" W.); and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Lexington Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Roanoke Regional/Woodrum Field, VA [New]

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Roanoke Regional Airport (lat. 37°19'29" N., long. 79°58'35" W.); and that airspace extending upward from 3,800 feet MSL to and including 5,200 feet MSL within a 10-mile radius of the airport from the 014° bearing from the airport clockwise to the 114° bearing from the airport; and that airspace extending upward from 3,400 feet MSL to and including 5,200 feet MSL from the 114° bearing from the airport clockwise to a line formed by a point 284° bearing from the airport at 5 miles to a point 267° bearing from the airport at 10 miles.

Issued in Washington, DC, on November 25, 1987.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-28081 Filed 12-7-87; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Administration

48 CFR Parts 2409 et al.

Solicitation Provisions, Contract Clauses, and Forms Required Under the HUD Acquisition Regulation; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2409, 2412, 2413, 2415, 2416, 2417, 2424, 2427, 2432, 2434, 2437, 2442, 2446, 2451, 2452, 2453, and 2470

[Docket No. R-87-1351; FR-2131]

Solicitation Provisions, Contract Clauses, and Forms Required Under the HUD Acquisition Regulation

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise various sections of the HUD Acquisition Regulation and would add 48 CFR Part 2452, Solicitation Provisions and Contract Clauses, and 48 CFR Part 2453, Forms. The purpose of this rule is to conform the HUD Acquistion Regulations to the Federal Acquisition Regulation and to implement other requirements arising from other statutes and regulationss.

DATE: Comments due: February 8, 1988.

ADDRESS: Interested parties are invited to submit comments concerning this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Deputy Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, telephone (202) 755-5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR was codified in Title 48, Chapter 1 of the Code of Federal Regulations. The FAR has been revised significantly to implement the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 253, 41 U.S.C. 403, and 31 U.S.C. 3551-3556).

HUD promulgated its regulations to implement the FAR on March 1, 1984 (49 FR 7696). The HUD Acquisition Regulation (HUDAR) was revised in an interim rule published in the **Federal Register** of November 8, 1985 (50 FR 46572) to implement CICA.

This rule would add 48 CFR Part 2452 (Solicitation Provisions and Contract Clauses) and 48 CFR Part 2453 (Forms) to the HUDAR. It also would revise various sections of the HUDAR to refer to Parts 2452 and 2453. In addition, it would revise various sections of the HUDAR to implement the Prompt Payment Act (31 U.S.C. 3901-3906) and OMB Circular A-109 ("Major System Acquisitions") and would provide a notice to offerors concerning the potential for the release of portions of their proposals under the Freedom of Information Act (5 U.S.C. 552).

II. Supplemental HUD Contract Clauses and Solicitation Provisions

Under FAR Subpart 1.3, the Department proposes HUDAR Part 2452, which would codify certain HUD solicitation provisions and contract clauses. These provisions and clauses would: (1) Supplement the FAR by providing solicitation provisions and contract clauses governing contractual relationships between HUD and its contractors that are not treated by the FAR, and (2) provide procedural guidance to prospective contractors in responding to HUD solicitations. An explanation of these revisions to the HUDAR and new clauses follows.

The organizational conflict of interest provisions currently at HUDAR 2409.504(b) would be removed and replaced with revised provisions at FAR 2452.209. The revised provisions would redefine and clarify the HUDAR definition of an organizational conflict of interest to accord with FAR 9.501. In addition, the Department would provide solicitation clauses implementing agency policy that contracts not be awarded to contractors with an organizational conflict of interest. HUDAR 2452.209-70 would require all offerors responding to HUD solicitations to disclose any information concerning the work to be performed under the solicitation that affects whether the offeror has a possible conflict of interest. HUDAR 2452.209-71 would provide that the offeror complete an Organizational Conflict of Interest Certification in which the offeror certifies to the best of its knowledge and belief that it does not have an organizational conflict of interest.

HUD proposes a new HUDAR Part 2412 (Contract Delivery or Performance) which would authorize the Contracting Officer to insert the contract period clause stated in HUDAR 2452.212-70 in all term form cost-reimbursement and fixed-price service contracts. The new clause would be a short form version of the time of delivery clauses cited in FAR 12.104. A substantial number of HUD service contracts involve the drafting and production of research reports for which the detailed schedules found in FAR clauses in 12.104 are not appropriate. The Department believes that this short form clause adequately expresses the Department's need for a certain delivery date.

Two solicitation provisions in this proposed rule provide information required for the Federal Procurement Data Center (FPDC). HUDAR 2452.215-71 would require offerors or bidders to submit their Dun and Bradstreet Contractor Establishment Number (DUNS) for all solicitations that exceed the small purchase limitation. HUDAR 2452.270-70 would require bidders and offerors to certify their status as minority business enterprises. This information would be provided to the FPDC in the event of contract award.

HUDAR 2415.407 would require the Contracting Officer to insert the clause at 2452.215-70 in all requests for proposals over the small purchase limitation. The proposal content and outline in 2452.215-70 would provide guidance to offerors on how to prepare and submit their proposals. No similar guidance is provided in the FAR.

This rule would revise current HUDAR 2416.405, which provides clauses for award fee contracts. Under this rule, the award fee clauses currently contained in 2416.405 would be shifted to HUDAR 2452.216-70 through 2452.216-74. These clauses, which involve fees awarded under a cost-pluse-award-fee contract, are intended to meet FAR requirements at 16.405(e).

A new clause concerning unpriced task orders for use in cost reimbursement indefinite quantity contracts would be inserted at HUDAR 2452.216-75. With respect to indefinite quantity contracts, the Department occasionally needs to authorize the commencement of contractor work before it reaches an agreement on the price for the task order. This clause would enable the Department to authorize contract performance subject to a maximum payment, while the parties conclude price negotiations.

HUDAR 2452.224-70 would include a Freedom of Information Act Notification clause that the Department currently inserts in all solicitations. The Department believes that the notification is useful in assisting offerors

to identify information contained in their proposals that the offerors might otherwise believe is confidential.

FAR coverage of the Prompt Payment Act (31 U.S.C. 3910–3906) has not yet been provided. In the interim, the Department would implement the provisions of the Act by using the clauses in proposed HUDAR 2452.232–70 through 2452.232–72. The Department intends to remove these clauses when FAR coverage is provided.

HUDAR 2432.4 would implement an existing delegation of authority to the Director, Office of Procurement and Contracts, to authorize the use of advance payments and to sign the required Determination and Findings.

A new Part 2434 is proposed to be added to implement requirements of OMB Circular A–109, Major System Acquisitions. The provision establishes dollar limits to define major system acquisitions and authorizes the Senior Procurement Executive to designate any requisition as "major".

Clauses implementing statutory and other requirements concerning the Department's data collection burdens and not currently covered by the FAR would be included at proposed HUDAR 2452.237–71 and 2452.237–72. Proposed HUDAR 2452.237–71 (Reproduction of Reports) currently is included in all solicitations where the contractor is required to produce, an an end product, reports, publication or other written materials. Government Printing and Binding Regulations published by the Congressional Joint Committee on Printing limit the amount of copying that may be done without prior authority from the Joint Committee on Printing. HUDAR 2452.237–71 would implement those regulations.

HUDAR 2452.237–72 (Coordination of Data Collection Activities) would be used where contractors collect identical information from ten or more public respondents. The clause states that collection of information may not begin until the Contracting Officer notifies the contractor that the Department has received OMB clearance under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

HUDAR 2347.110(b) would require the addition of a Key Personnel clause at HUDAR 2452.237–70 when the Department requires a contractor to identify key personnel in contract performance. The Department often requires the identification of key personnel and evaluates a contractor's proposal based on the qualifications of persons assigned to perform contract tasks. This clause requires the contractor to obtain approval from a Contracting Officer before shifting key personnel to another project. There is no current FAR clause covering key personnel. A related clause, HUDAR 2432.237–75, Clearance of Personnel, would be required in all contracts where contractor personnel will be working in a HUD office. The clause would require the contractor to submit Form FD–258 "Fingerprinting Charts" and GSA Form 176 "Statement of Personal History" for all contractor employees who have access to HUD facilities. These requirements are imposed to maintain building security.

HUDAR 2452.237–73 and 2452.237–74 would require the identification of the Government Technical Representative (GTR) and to describe the scope of the GTR's authority. There is no current FAR coverage, and the Department believes it is useful to provide contractors with this information in order to prevent confusion concerning the identification and limits of authority of the GTR. A related clause, HUDAR 2452.246–70 (Inspection and Acceptance), would identify the GTR as the agency official responsible for inspecting and accepting work performed under contracts.

HUDAR 2442.705(b) would require that the Contracting Officer insert HUDAR 2452.242–70 (Indirect Costs) in cost reimbursement solicitations and contracts when the contracts will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates. The FAR authorizes the use of such a clause.

HUDAR 2442.1107 would require that the Contracting Officer insert the clause in 2452.242–71 (Project Management System) in solicitations or contracts for professional or technical services exceeding $100,000. The project management system requires contractors, using HUD reporting forms, to develop a workplan in narrative and graphic form that summarizes the schedule and financial elements of the contract. The system also requires contractors to provide narrative and graphic progress reports. The use of the project management system may be waived by the Contracting Officer upon substitution of another acceptable means of project management.

HUDAR 2451.303 would require the insertion of the clause in HUDAR 2452.251–70 (Contractor Employee Travel) in all solicitations and contracts involving airline travel. The clause in HUDAR 2452.251–70 would obligate contractors to use, to the maximum extent practicable, travel discounts offered to Federal travelers that are available to contractor employees performing contract business.

III. Supplemental HUD Forms

In addition to the supplemental clauses and solicitation provisions, the Department would add HUDAR Part 2453 to include supplemental forms for which no FAR coverage is provided. These forms are for internal HUD use and include:

In Part 2413

HUD Form 24007, Purchase/Delivery Order Data File;

HUD Form 24001, Order for Supplies or Services;

HUD Form 2542, Purchase Order and Payment Authorization (Acquired Property Program);

In Part 2415

HUD Form 4056, Abstract of Proposals; and

In Part 2417

HUD Form 730, Award or Modification of Interagency Agreement.

HUD Forms to be used by contractors and referred to in Part 2453 would include:

In Part 2427

HUD Form 770, Report of Inventions and Subcontracts;

In Part 2442

HUD Form 441.1, Project Management System Baseline Plan;

HUD Form 666.1, Project Management System Progress Report; and

In Part 2446

HUD Form 9519, Acquired Property Inspection Report.

IV. Other Revisions to the HUDAR

In addition to requiring the use of certain forms, this rule also would revise HUDAR 2470.102 (Responsibility) to reflect the transfer of responsibility for the Minority Business Enterprise program from the Assistant Secretary for Fair Housing and Equal Opportunity to the Director, Office of Small and Disadvantaged Business Utilization.

V. Miscellaneous

This rule would not constitute a "major rule" as the term is defined in section 1(b) of Executive Order 12291. This rule would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to

compete with foreign-based enterprises in domestic or export markets. The revisions in this rule would involve modifications of various departmental procedures for HUD procurement activities. These modifications primarily involve the codification of procedures involving certain solicitation provisions, contract clauses, and forms that have been implemented by HUD for many years.

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because this rule merely codifies current departmental procedures.

These HUDAR revisions would codify certain HUD procurement procedures. The information collection burdens under these procurement procedures have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502–0278, 2535–0306, and 2535–0085, and 2535–0091.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item 1049 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40392) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2409, 2412, 2413, 2415, 2416, 2417, 2424, 2427, 2432, 2434, 2437, 2442, 2446, 2451, 2452, 2453, 2470

Government procurement, HUD Acquisition Regulation.

Accordingly, Title 48, Chapter 24 of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2409—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 2409 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (49 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The table of contents is amended by adding the following sections:

Subpart 2409.5—Organizational Conflicts of Interest

Sec.

* * * * *

2409.508 Solicitation provisions and contract clause.
2409.508–1 Solicitation provisions.
2409.508–2 Contract clause.

Subpart 2409.5—Organizational Conflicts of Interest

3. Section 2409.504 is amended by revising paragraph (a)(5), removing paragraph (b), redesignating paragraph (c) as (b) and revising the first sentence of (b)(1), redesignating paragraphs (d) and (e) as (c) and (d) and revising new paragraph (d) as follows:

2409.504 Contracting officer responsibilities.

* * * * *

(a) * * * (5) Refusal to provide the disclosure or representation and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award or provide the rationale for post-award default action if the exercise of due diligence would have disclosed an apparent conflict. This provision applies equally to post-award disclosure requirements contained in the clause required by HUDAR 2409.508–2.

* * * * *

(b) * * * (1) The disclosure or certification required by HUDAR 2409.508–2 is designed to alert the Contracting Officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor.

* * * * *

(d) *Action in Lieu of Termination.* If the Contracting Officer determines that it would not be in the best interest of the Government to terminate a contract as provided in the clause cited at HUDAR 2409.508–2, the Contracting Officer shall take every reasonable action to eliminate, or otherwise neutralize the organizational conflict of interest.

4. Sections 2409.508, 2409.508–1, and 2409.508–2 are added to read as follows:

2409.508 Solicitation provisions and contract clause.

2409.508–1 Solicitation provisions.

The Contracting Officer shall insert the provisions at 2452.209–70, Organizational Conflicts of Interest Notification, and 2452.209–71, Organizational Conflicts of Interest Certification, in all solicitations over the small purchase limitation.

2409.508–2 Contract clause.

The Contracting Officer shall insert the clause at 2452.209–72, Organizational Conflicts of Interest, in all contracts.

5. Part 2412 is added to read as follows:

PART 2412—CONTRACT DELIVERY OR PERFORMANCE

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2412.1—Delivery or Performance Schedules

2412.104 Contract clause.

(a) The Contracting Officer may insert the clause at 2452.212–70, Contract Period, in all term form cost-reimbursement and fixed-price service solicitations and contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. The authority citation for Part 2413 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. The table of contents for Part 2413 is amended by adding the following subparts:

Subpart 2413.1—General

Sec.

2413.107 Solicitation and evaluation of quotations.

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.
2413.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

8. Subpart 2413.1, consisting of section 2413.107, is added to read as follows:

Subpart 2413.1—General

2413.107 Solicitation and evaluation of quotations.

(a)(4) Contracting Officers shall use HUD Form 24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a small purchase,

including recording written and oral quotations received and documenting orders against GSA contracts.

9. Subpart 2413.5, consisting of sections 2413.505 and 2413.505–2, is added to read as follows:

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.

2413.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Contracting Officers may use the HUD Form 24001, Order for Supplies or Services, in lieu of Optional Form 347 for individual purchases not exceeding the small purchase limit.

(b) For small purchases under the Acquired Property Program, Contracting Officers shall use HUD Form 2542, Purchase Order and Payment Authorization. This form should not be used for procurements of less than $50 or construction contracts expected to exceed $2,000. It shall not be used for purchases above the small purchase limit.

PART 2415—CONTRACTING BY NEGOTIATION

10. The authority citation for Part 2415 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Section 2415.407 is added to read as follows:

2415.407 Solicitation provisions.

(a) The Contracting Officer shall insert the provision at 2452.215–70, Proposal Content and Outline, in all negotiated solicitations over the small purchase limitation.

(b) The Contracting Officer shall insert the provision at 2452.215–71, DUNS Contractor Establishment Number, in all solicitations that exceed the small purchase limitation.

12. Sections 2415.411 and 2415.411–70 are added to read as follows:

2415.411 Receipt of proposals and quotations.

2415.411–70 Recording of proposals.

HUD Form 4056, Abstract of Proposals, may be used to record the names and addresses of offerors whose proposals are received before the stated deadline. The offerors total price, including any estimated cost and fixed fee are to be recorded after the deadline at the time the proposals are opened.

PART 2416—TYPES OF CONTRACTS

13. The authority citation for Part 2416 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. Section 2416.405 is revised to read as follows:

2416.405 Contract clauses.

(e)(1) The Contracting Officer shall insert the clauses at 2452.26–70, Estimated Cost, Base Fee, and Award Fee; 2452.216–71, Payment of Base and Award Fee; 2452.216–72, Determination of Award Fee Earned; 2452.216–73, Performance Evaluation Plan; and 2452.216–73, Distribution of Award Fee, in all award fee contracts. The Contracting Officer may modify the clauses to meet individual situations and any clause or specific requirement therein may be deleted when it is not applicable to a given contract.

15. Section 2416.504 is added to read as follows:

2416.504 Indefinite-Quantity Contracts.

(e) The Contracting Officer shall insert the clause at 2452.216–75, Unpriced Task Orders, in all indefinite-quantity contracts.

16. Part 2417 is added to read as follows:

PART 2417—SPECIAL CONTRACTING METHODS

Authority: Economy Act (31 U.S.C. 1535); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

17. The authority citation for Part 2424 is revised to read as follows:

Authority: Freedom of Information Act (5 U.S.C. 552); Privacy Act of 1974 (5 U.S.C. 552a); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

18. Section 2424.202–70 is added to read as follows:

2424.202–70 Solicitation provision.

The Contracting Officer shall insert the provision at 2452.224–70, Freedom of Information Act Notification, in all negotiated solicitations exceeding the small purchase limitation.

19. Part 2427 is added to read as follows:

PART 2427—PATENTS, DATA, AND COPYRIGHTS

Subpart 2427.3—Patent Rights Under Government Contracts

Sec.
2427.305 Administration of patent rights clauses.
2427.305–2 Follow-up by contractor.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2427.3—Patent Rights Under Government Contracts

2427.305 Administration of patent rights clauses.

2427.305–2 Follow-up by contractor.

(b) *Contractor reports.* Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to all contractors upon physical completion of the contract.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

20. Part 2432 is revised to read as follows:

PART 2432—CONTRACT FINANCING

Subpart 2432.4—Advance Payments

Sec.
2432.402 General.

Subpart 2432.9—Prompt Payment

2432.900 Scope of subpart.
2432.901 Applicability.
2432.903 Policy.
2432.908 Contract clauses.

Authority: Prompt Payment Act (31 U.S.C. 3901–3906); secs. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2432.4—Advance Payments

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts.

(2) Each advance payment situation shall be coordinated with the Office of Finance and Accounting before authorization may be given.

Subpart 2432.9—Prompt Payment

2432.900 Scope of subpart.

This implements the provisions of the Prompt Payment Act (31 U.S.C. 3901–3906) and Office of Management and Budget (OMB) Circular A–125. The Act was specifically designed to encourage Federal Government managers to improve their bill paying procedures by authorizing the charging of an interest penalty when agencies fail to pay their bills on time or when discounts are taken after the discount period. This subpart also prescribes clauses for designating wire transfer procedures to make contract payments under the Department of Treasury Financial Communications System for making Treasury disbursed vendor payments in excess of $25,000, in accordance with Treasury Bulletin 83–14.

2432.901 Applicability.

The provisions of this part are not applicable to contracts when advance payments are used.

2432.903 Policy.

It is the policy of the Government to include payment terms in contracts and to make payments by the due dates determined in accordance with such terms. Adherence to this policy is intended to result in the avoidance of interest penalties on overdue payments, establish better business relationships with suppliers, and increase competition for Government contracts.

2432.908 Contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.232–70, Payment (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

(b) The Contracting Officer shall insert the clause at 2452.232–71, Payment (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

(c) The Contracting Officer shall insert the clause at 2452.232–72, Method of Payment, in all fixed-price and cost-reimbursement solicitations and contracts when individual payments are expected to exceed $25,000.

21. Part 2434 is added to read as follows:

PART 2434—MAJOR SYSTEM ACQUISITIONS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2434.001 Definition.

(b) The Department's dollar threshold for a "major system", under OMB Circular A–109, "Major System Acquisitions", is $15,000,000. The Senior Procurement Executive may, however, designate any acquisition as a "major system acquisition" if its priority to the Department's overall mission warrants such emphasis.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2437—SERVICE CONTRACTING

22. The table of contents is amended by adding the following subpart:

Subpart 2437.1—Service Contracts—General

Sec.
2437.101 Definitions.
2437.110 Solicitation provisions and contract clauses.

23. The authority citation for Part 2437 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

24. Subpart 2437.1, consisting of sections 2437.101 and 2437.110, is added to read as follows:

Subpart 2437.1—Service Contracts—General

2437.101 Definitions.

"Government Technical Representative" (GTR) means that individual responsible for the technical direction, oversight, and evaluation of the Contractor's performance.

2437.110 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.237–70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(b) The Contracting Officer shall insert the clause at 2452.237–71, Reproduction of Reports, in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

(c) The Contracting Officer shall insert the clause at 2452.237–72, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

(d) The Contracting Officer shall insert the clause at 2452.237–73, Conduct of Work, in all service contracts.

(e) The Contracting Officer shall insert the clause at 2452.237–74, Technical Direction, in all cost-reimbursement solicitations and contracts for services.

(f) The Contracting Officer shall insert the clause at 2452.237–75, Clearance of Personnel, in all solicitations and contracts where Contractor personnel will be working on-site in any HUD office. Contractors shall be required to complete Forms FD–258, "Fingerprinting Charts" and GSA–176, "Statement of Personal History."

25. Part 2442 is added to read as follows:

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION

Subpart 2442.7—Indirect Cost Rates

Sec.
2442.705 Final indirect cost rates.
2442.705–70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.
2442.1107 Contract clause.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242–70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services exceeding $100,000.00 shall use HUD Form 441.1, "Project Management System Baseline Plan," to outline how the Contractor proposes to carry out the contract work and HUD Form 661.1, "Project Management System Progress Report," to monitor quantitative progress against the baseline plan. Each of these forms shall be accompanied by a narrative description. The Contracting Officer may waive the requirement to use these forms if he or she believes the Statement of Work or Contractor's technical proposal are sufficiently specific or another acceptable means for project management is substituted. Contracts awarded under the Acquired Property Program are exempt from use of this reporting requirement.

2442.1107 Contract clause.

The Contracting Officer shall insert the clause at 2452.242–71, Project Management System, in solicitations and contracts for professional or technical services exceeding $100,000 unless the Contracting Officer determines that the Statement of Work or technical proposal is sufficiently specific or another acceptable method for project management is substituted.

26. Part 2446 is added to read as follows:

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.
2446.502 Responsibility for acceptance.
2446.502–70 Contract clause.

Subpart 2446.6—Material Inspection and Receiving Reports

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2446.5—Acceptance

2446.502 Responsibility for acceptance.

2446.502–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246–70, Inspection and Acceptance, in solicitations and contracts unless inspection and acceptance will be performed by someone other than the Government Technical Representative (GTR).

Subpart 2446.6—Material Inspection and Receiving Reports

Note: Inspection of contractor's performance shall be performed as often as necessary to protect HUD's interest. HUD Form 9519, Acquired Property Inspection Report, shall be used to document inspection and acceptance under the Acquired Property Program. Distribution shall be as indicated on the form.

27. Part 2451 is added to read as follows:

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2451.3—Contractor Use of Government Discount Air Passenger Transportation Rates

2451.303 Contract clause.

The Contracting Officer shall insert the clause at 2452.251–70, Contractor Employee Travel, in all cost-reimbursement contracts involving airline travel.

28. Part 2452 is added to read as follows:

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2452.2—Texts of Provisions and Clauses

Sec.
2452.209–70 Organizational conflicts of interest notification.
2452.209–71 Organizational conflicts of interest certification.
2452.209–72 Organizatonal conflicts of interest.
2452.212–70 Contract period.
2452.215–70 Proposal content and outline.
2452.215–71 DUNS contractor establishment number.
2452.216–70 Estimated cost, base fee, and award fee.
2452.216–71 Payment of base and award fee.
2452.216–72 Determination of award fee earned.
2452.216–73 Performance evaluation plan.
2452.216–74 Distribution of award fee.
2452.216–75 Unpriced task orders.
2452.224–70 Freedom of Information Act notification.
2452.232–70 Payment (fixed-price).
2452.232–71 Payment (cost-reimbursement).
2452.232–72 Method of payment.
2452.237–70 Key personnel.
2452.237–71 Reproduction of reports.
2452.237–72 Coordination of data collection activities.
2452.237–73 Conduct of work.
2452.237–74 Technical direction.
2452.237–75 Clearance of personnel.
2452.242–70 Indirect costs.
2452.242–71 Project management system.
2452.246–70 Inspection and acceptance.
2452.251–70 Contractor employee Travel.
2452.270–70 Certification of status as a minority business enterprise.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2452.2—Texts of Provisions and Clauses

2452.209–70 Organizational conflicts of interest notification.

As prescribed in 2409.508–1, insert the following solicitation provision in all solicitations.

Organizational Conflict of Interest Notification (Feb 1987)

(a) It is the Department of Housing and Urban Development's policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage.

(b) Offerors shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technical sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict. (Offerors should refer to FAR Subpart 9.5 and HUDAR Subpart 2409.5 for policies and procedures for avoiding neutralizing, or mitigating organizational conflicts of interest).

(c) In the absence of any relevant interests referred to above, the offeror shall complete the certification at 2452.209–71, Organizational Conflicts of Interest Certification.

(d) No award shall be made until the disclosure or certification has been evaluated by the Contracting Officer. Failure to provide the disclosure or certification will be deemed to be a minor infraction and the offeror will be permitted to correct the omission within a time frame established by the Contracting Officer.

(e) Refusal to provide the disclosure or certification and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the offeror.

(f) If the Contracting Officer determines that a potential conflict exists, the selected offeror shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

2452.209-71 Organizational conflict of interest certification.

As prescribed in 2409.508-1, insert the following solicitation provision in all solicitations.

Organizational Conflicts of Interest Certification (Apr 1984)

The bidder or offeror certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed Government contract and the bidder or offeror's organizational, financial, contractual or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the offeror; or

(b) Impair the offeror's objectivity in performing the contract work.

☐ In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, not actual or apparent conflict of interests exists with regard to

Offeror(s) or Bidder(s) _____

possible performance of this procurement.

(End of provision)

2452.209-72 Organizational conflicts of interest.

As prescribed in 2409.508-2, insert the following contract clause in all contracts.

Organizational Conflicts of Interest (Apr 1984)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.212-70 Contract period.

As prescribed in 2412.104(a), insert the following clause in all term form cost-reimbursement and fixed-price service solicitations and contracts.

Contract Period (Apr 1984)

The Contractor shall complete all work hereunder, including delivery of the final report, if required, within _____ months from the effective date of the contract.

(End of clause)

2452.215-70 Proposal content and outline.

As prescribed in 2415.407(a), insert the following solicitation provision in all solicitations over the small purchase limitation.

Proposal Content and Outline (Apr 1984)

(a) Proposals shall be submitted in two separate parts as further described below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The envelope must show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror. Part I shall consist of the technical and management submittal of the proposed work. Part II shall consist of complete cost and pricing data. Each part of the proposal shall be complete in itself so that the evaluation of both parts can be accomplished concurrently, and the evaluation of the technical and management submittal can be made strictly on the basis of its merit.

(b) Part I—Technical and Management

Section 1: Proposal Coverage. Cover the scope of work and general objectives which the proposal addresses.

Section 2: Tasks and Methods. Describe the principal tasks or sub-projects to be undertaken together with a discussion of their relationships to each other. Discuss the considerations for selecting, performing and the time sequencing of the tasks or sub-projects. Describe and discuss the method of personnel training and field personnel recruitment and the method of project control to be applied to the project to ensure timely, professional and quality performance. The Contractor must clearly state his/her plans for project management and in providing current and updated project progress to HUD during those phases of Contractor performance that require substantial coordination with HUD personnel.

Section 3: Organization and Staffing. Include an organizational chart for the project showing the name of the project manager and the names of key personnel. Include a brief resume for each person shown on the special qualifications applicable to the performance of the project. Describe the specific effort to be contributed to the project by each of the key personnel and include a statement expressed either in percentage or person-hours that each will devote to the effort. Include a summation of the minimum person-hours or person-months of professional effort to be used in completing the project. Describe the physical facilities to be used. If consultants, advisors or subcontractors are to be used, describe the arrangements and include resumes of the Key personnel.

Section 4: Prior and Current Experience. Include a list of projects currently in progress and completed within the last two years which are relevant to this procurement. Include names, addresses and telephone numbers of contact points with these clients. The Government reserves the right to request information from any source so named.

Section 5: Conflicting or Multiple Use of Contractor Resources. Include a description of the contractor's current or planned projects that may draw upon resources or personnel, including top management, proposed to be committed to this project. Explain how such conflicting or multiple uses will be resolved to avoid impairing the timely, professional, and high-quality performance of this project. If the proposer has one or more existing HUD projects that will run concurrently with this project, explain how the level of attention described in the proposal will be preserved across projects.

The Government reserves the right to downgrade the related Factor for Award score for any proposal that does not adequately and credibly address such conflicts or multiple uses.

(c) Part II—Cost and Pricing Data

Furnish cost or pricing data using the forms provided in Part III, Section J of this solicitation, SF-1411, Contract Pricing Proposal. Instructions for using that form are also in Section J. Round all amounts to the nearest dollar. Also execute the "Certifications and Representations" included in Part IV, Section K, and where appropriate, a "Certification of Current Cost or Pricing Data". Furnish the names and telephone number of the Government audit organization having cognizance of your activity.

(d) Proposals shall be submitted in six (6) copies each of Part I and II.

(End of provision)

2452.215-71 DUNS contractor establishment number.

As prescribed in 2415.407(b), insert the following solicitation provision in all

solicitations which exceed the small purchase limitation.

DUNS Contractor Establishment Number (Apr. 1984)

Offerors or Bidders are required to complete the following for all solicitations which exceed the small purchase limitation.
DUNS Contractor Establishment Number ——
(End of provision)

2452.216-70 Estimated cost, base fee, and award Fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Estimated Cost, Base Fee, and Award Fee (Apr 1984)

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the clause entitled Payment of Base and Award Fee. In addition, a maximum Award Fee of $ (Insert Amount) is available for payment in accordance with the clause entitled Payment of Base and Award Fee.
(End of Clause)

2452.216-71 Payment of base and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Payment of Base and Award Fee (Aug 1987)

(a) *Base Fee.* The Government will make payment of the base fee in (insert number) increments on the schedule set forth in the Performance Evaluation Plan established by the Government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(b) *Award Fee.* The Government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.
(End of Clause)

2452.216-72 Determination of award fee earned.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Determination of Award Fee Earned (Aug 1987

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the Government shall evaluate the contractor's performance and determine the amount, if any, of award fee earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision is made unilaterally by the Government and is not subject to the disputes clause or the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* In reaching this decision, the FDO may consider any justification of award fee the Contractor submits, provided that the justification is submitted within (*insert number*) days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the FDO's decision, and shall be sent to the Contractor within (*insert number*) days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.
(End of Clause)

2452.216-73 Performance evaluation plan.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Performance Evaluation Plan (Aug 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor (*insert number*) days before the start of the evaluation period.

(b) The Government may initially revise the Performance Evaluation Plan at any time during the contract term. The Contractor shall be notified at least (*insert number*) days before the start of the evaluation period to which the change will apply.
(End of Clause)

2452.216-74 Distribution of award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Distribution of Award Fee (Apr 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:
Evaluation Period: ——
Available Award Fee: ——

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designed in the contract. The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(1) The term "base fee and award fee" should be substituted for "fixed-fee" where it appears in the clause at FAR 52.243-2, Changes.

(2) The term "base fee" should be substituted for "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(3) The phrase "base fee, if any, and such additional fee as may be awarded as provided for in the Schedule" should be substituted for the term "fee" whenever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.
(End of clause)

2452.216-75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause in all indefinite-quantity contracts.

Unpriced Task Orders (Apr 1984)

(a) Although it is anticipated that the Government and the Contractor will reach agreement on the total cost and fee or profit (if applicable) for the effort to be undertaken, prior to the issuance of a Task Order, there may be occasions when the Government wishes to authorize commencement of work prior to agreement on price. If this is the case, a Task Order may be issued which provides that the Contractor shall immediately commence performance of the services specified in the order, and shall submit a pricing proposal within fifteen days of receipt of the Task Order. Upon negotiations of the cost, a supplemental agreement shall be executed to make specific all terms and conditions of the Task Order. Failure to agree for costs ordered under this procedure shall be considered a dispute within the meaning of the clause of this contract entitled Disputes.

(b) Unpriced Task Orders shall indicate a "not-to-exceed" amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the Task Order. The Task Order shall only require the Contracting Officer's signature, but shall comply with all other Task Order requirements.
(End of clause)

2452.224-70 Freedom of Information Act notification.

As prescribed in 2424.202-70, insert the following provision in all solicitations.

Freedom of Information Act Notification (Apr 1984)

Proposals submitted in response to this solicitation are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether or not to release information contained in a proposal in the event a FOIA request is received, offerors may, through clear earmarking or otherwise, indicate those portions of their proposals which they believe should not be disclosed. While an offeror's advice will be considered by the Department in its determination whether to release requested information or not, it must be emphasized that the Department is required by the FOIA to make an independent

evaluation as to the information, notwithstanding the offeror's views. It is suggested that if an offeror believes that confidential treatment is appropriate, the basis for this view should be provided, where possible, because general assertions or blanket requests for confidentiality, without more information, are not particularly helpful to the Department in making determinations concerning the release of information under the Act. It should also be noted that the Department is required to segregate disclosable information from non-disclosable items, so particular care should be taken in the identification of each portion of which confidential treatment is requested. Offeror's views concerning confidentiality will be used to aid the Department in preparing its response to FOIA requests. Further, offerors should note that the presence or absence of such comments or earmarking regarding confidential information will have no bearing whatsoever on the evaluation of proposals submitted pursuant to this solicitation, nor will the absence of this earmarking automatically result in greater disclosure.

(End of provision).

2452.232-70 Payment (fixed-price).

As prescribed in 2432.908(a), insert the following clause in all fixed price solicitations and contracts:

Payment (Fixed Price) (Sept 1987)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Part I, Section B of this contract.

(USE PARAGRAPH (b) ONLY IF PARTIAL PAYMENTS APPLY. OTHERWISE, PARAGRAPH (a) ABOVE ASSUMES THE CONTRACTOR WILL BE PAID THE FULL AMOUNT UPON COMPLETION OF ALL CONTRACT REQUIREMENTS)

(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment number	Specific deliverable	Delivery date	Payment amount
1.			
2.			
3.			
(Continue as necessary):			

(c) *Submission of Invoices.* Invoices shall be submitted in an original and three (3) copies to the payment office identified in Block 12 of the SF-26 or Block 25 of the SF-33. To constitute a proper invoice, the invoice must include the following information:

(1) The Contractor's name and invoice date;

(2) Contract number;

(3) Description, price, quantity of property and services actually delivered or rendered, and date(s) of delivery. (If delivery is made to other than the address in Block 11 of the contract (or the address specified in Part I, Section F, if award is made on SF-33), the invoice should so indicate);

(4) Shipping and payment terms;

(5) Name (where practicable), title, phone number, and complete mailing address or responsible official to whom payment is to be sent; and

(6) If the Contractor is an individual proprietorship or a partnership, the tax identification number.

Note.—To assist the Government in making timely payments, the Contractor is also requested to identify the appropriation number (from Block 14 if award is made on the SF-26 or Block 21 is the award is made on the SF-33) on each invoice. The Contractor is also requested to identify on the envelope that an invoice is enclosed.

(d) *Interest on Overdue Payments.* (1) The Prompt Payment Act (31 U.S.C. 3901-3906) is applicable to payments under this contract and requires the payment to Contractors of interest on overdue payments and improperly taken discounts.

(2) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act, Office of Management and Budget Circular A-125, and the terms of this clause.

(e) *Payment Due Date.* (1) Payments under this contract will be due on the thirtieth calendar day after the later of:

(i) The date of actual receipt of a proper invoice in the payment office identified in Block 12 of the SF-26 or Block 25 of the SF-33; or

(ii) The date the supplies or services are accepted by the Government. However, on a final invoice of any balance of funds due the contractor for supplies delivered or services performed under the contract but where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) The time and date stamp of the Office of Finance and Accounting shall determine the date of actual receipt of the invoice.

(3) An interest penalty shall be paid by the Government, without request from the Contractor, if payment is not made within 15 days after the due date. An interest penalty shall also be paid without request from the Contractor, if an improperly taken discount for prompt payment was not corrected within 15 days after the expiration of the discount period. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(i) If an interest penalty is owed but not paid, the interest penalty will also accrue interest until it is paid. Any interest penalty remaining unpaid for any 30-day period will be able to the invoice amount, if also unpaid, and interest penalties will accrue monthly on the combined amount.

(ii) The Government shall have 14 calendar days to inspect and accept deliverables under this contract. For purpose of computing any interest penalty that might be due the Contractor, Government acceptance shall be constructively deemed to have occurred on the 14th calendar day after the Contractor delivered the supplies or completed performance of the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. The constructive acceptance provision, however, does not compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities. No interest penalty shall be due the Contractor if delivered supplies or services are determined to be unacceptable.

(iii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 15 days; and

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iv) The interest rate shall be the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest period will be inclusive from the first day after the due date through the payment date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(4) The date of the check issued in payment shall be considered to be the date that payment is made.

(f) Contractor Remittance Address. Payment shall be made to the Contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(Insert appropriate address)

(End of clause)

Alternate I (APR 1984). This alternate is required for all fixed-price contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified in Block 5 of the SF-26 or Block 7 of the SF-33. To constitute a proper invoice, the invoice must include the following information:

2452.232-71 Payment (cost-reimbursement.

As prescribed in 2432.908(b), insert the following clause in all cost-reimbursement solicitations and contracts.

Payment (Cost-Reimbursement) (Sept 1987)

(a) The Contractor shall submit an original and two (2) copies of each voucher, showing the elements of cost for the billing period and for the cumulative costs to date. All vouchers shall be distributed as follows, *except for the final voucher* which shall be submitted in all copies to the Contracting Officer.

Interim Public vouchers	Attention	Address shown on face of contract in block
Original	Voucher Examiner.	12
One copy	Contracting Officer.	5
One copy	GTR	11

(b) In addition to showing the elements of cost for the billing period and for the cumulative costs to date, the following data must be included in the voucher for it to constitute a proper voucher:

(1) Contractor's name and voucher date;

(2) Contract number;

(3) Description of services and period for which reimbursement is sought;

(4) Name (where practicable), title, phone number, and complete mailing address or responsible official to whom payment is to be sent; and,

(5) If the Contractor is an individual proprietorship or a partnership, the tax identification number.

To assist the Government in making timely payments, the Contractor is requested to identify the appropriation number (from Block 14 of the SF 26) on each voucher. The Contractor is also requested to identify on the envelope that a voucher is enclosed.

(c) *Payment Due Date.*

(1) Payments under this contract will be due on the thirtieth calendar day after the actual date of receipt of a proper voucher by the Office specified in Block 12 of the contract. The time and date stamp or other records of that office shall determine the date of receipt of the voucher.

(2) The date of the check issued in payment shall be considered to be the date payment is made.

(3) With the exception of the final payment, all payments under this contract are provisional and subject to audit of individual vouchers. Each payment, therefore, shall be subject to reduction for amounts included in the related vouchers which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments on the preceding voucher.

(d) *Contractor Remittance Address.*

The Government shall remit all payments to the following address:

(Insert appropriate address)

(End of clause)

Alternate I. This alternate is required for all cost-reimbursement contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (a) for that in the basic clause;

(a) The Contractor shall submit an original and three (3) copies of each voucher showing the elements of cost for the billing period and for the cumulative costs to date. All vouchers shall be submitted to the Contracting Officer specified in Block 5 of the contract.

The words "Block 12" specified in the first sentence of paragaph (c)(1) are substituted with "Block 5."

2452.232-72 Method of payment.

As prescribed in 2432.908(c), insert the following clause in all fixed-price and cost-reimbursement solicitations and contracts when individual payments are expected to exceed $25,000.

Method of Payment (Apr 1984)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communication System (TFCS) at the option of the Government.

(b) The Contractor is required to provide (in writing) to the Contracting Officer, the necessary information (e.g., bank name, account no.) to facilitate contract payments by electronic funds transfer.

(c) Any changes to the TFCS information provided to the Contracting Officer shall also be furnished in writing. It is the contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The requested TFCS information should be submitted to the address in Block_____of the face page of this contract.

(End of clause)

2452.237-70 Key personnel.

As prescribed in 2347.110(a), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the Contractor's key personnel.

Key Personnel (Apr 1984)

The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(List Key Personnel)

(End of clause)

2452.237-71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

Reproduction of Reports (Apr 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of Clause)

2452.237-72 Coordination of data collection activities.

As prescribed in 2347.110(c), insert the following clause in solicitations and contracts where the Contractor is required to collect identical information from ten or more public respondents.

Coordination of Data Collection Activities (Apr 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501–3520) applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

2452.237-73 Conduct of work.

As prescribed in 2437.110(d), insert the following clause in all contracts for services.

Conduct of Work (Apr 1984)

(a) The Government Technical Representative (GTR) for liasion with the Contractor as to the conduct of work is _____, or a successor designated in writing by the Contracting Officer.

(b) The Contractor's work hereunder shall be carried out under the supervision of _____.

(End of clause)

Alternate I. This alternate is required for all fixed-price contracts for services. In such cases, add the following paragraph (c):

(c) The GTR shall provide direction on contract performance. Such direction must be within the contract scope of work and may not be of a nature which: (1) Institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243–2; (3) causes an increase or decrease in the cost of the contract; (4) alters the period of performance or delivery dates; or, (5) changes any of the other express terms or conditions of the contract.

2452.237–74 Technical direction.

As prescribed in 2437.110(e), insert the following clause in all cost-reimbursement type solicitations and contracts.

Technical Direction (Jun 1985)

(a) The GTR will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the contractor as to which areas the Contractor is to emphasize or pursue.

(2) Comments on the approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work.

The GTR does not have the authority to issue technical direction that: (1) Institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243–2; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the GTR or confirmed by him or her in writing within five calendar days after verbal issuance.

(End of clause)

2452.237–75 Clearance of personnel.

As prescribed in 2437.110(f), insert the following clause in solicitations and contracts where contractor personnel will be working on-site in any HUD office.

Clearance of Personnel (Jun 1985)

(a) The Contractor shall submit to the Contracting Officer within five days after contract award, two (2) completed Forms FD–258, "Fingerprinting Charts" and one (1) GSA Form 176, "Statement of Personal History," for the Contractor and all employees who have access to the building in performance of the contract work. These forms must be submitted for all replacement employees prior to entrance on duty. Necessary forms will be furnished by HUD. If the Contracting Officer receives an unsuitable report on any employee after processing of these forms or if the Contracting Officer finds a prospective employee to be unsuitable or unfit for his/her assigned duties, the Contractor shall be advised immediately that such employee cannot continue to work or be assigned to work under the contract.

(b) HUD shall have and exercise full and complete control over granting, denying, withholding, or terminating employment eligibility of contractor employees.

(c) The Contractor shall see that every new employee shows to HUD personnel, designated by the GTR, personal identification (i.e., driver's license, Social Security card, etc.) before the employee enters on duty. Any employee's name found on the Contracting Officer's list of unsuitable contractor employees shall not be permitted to enter on duty, and the Contractor shall be so notified.

(End of clause)

2452.242–71 Indirect costs.

As prescribed in 2442.705–70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Indirect Costs (Apr 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, "Allowable Cost and Payment" the rates listed below are established. If the column entitled, "Ceiling Rate" has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

Period	Category	Provisional rate	Ceiling rate	Base
Effective date until amended.....				

(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period.

(End of clause)

2452.242–71 Project management system.

As prescribed in 2442.1107, insert the following clause in solicitations or contracts for professional or technical services exceeding $100,000. Use of this system may be waived by the Contracting Officer if he or she believes the Statement of Work or technical proposal are sufficiently specific or another acceptable means of project management is substituted.

Project Management System (Jun 1984)

The Contractor shall provide to the GTR and Contracting Officer a project management system workplan and regular status reports showing actual progress against the workplan. The project management system utilizes two reporting forms (the HUD 441.1 Baseline Plan and the HUD 661.1 Progress Report), in addition to a narrative description. Briefly, the workplan and progress reports shall consist of the following:

Workplan

The workplan shall consist of a narrative description and a graphic summary (HUD 441.1) of the schedule and financial elements of the contract. The narrative shall: (1) Describe the planned schedule; (2) identify each step in the work process required for completing the contract work and the period of time needed to accomplish each step, expressed in terms of calendar dates; (3) provide the staff, financial, and other resources allocated to each task; and, (4) provide the rationale for project organization, staff utilization, and other resources allocated to each task or activity. The HUD 441.1 shall show: (1) Cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and (2) the planned project schedule that traces, by reporting period, the task or sub-task start dates, periods of work in progress, and completion dates.

Progress Reports

Progress reports shall consist of a narrative report and the HUD 661.1 which depicts actual progress against planned progress. The narrative report shall: (1) Provide a brief, factual summary description of technical progress made and costs incurred for each task (or group of tasks) during the reporting period; and, (2) identify significant problems and their impacts, causes, proposed corrective actions, and the effect that such corrective actions will have on the accomplishment of the contract objectives. The HUD 661.1 reproduces the Baseline Plan (HUD 441.1) and shall show: (1) the schedule status or the degree of completion of tasks/activities by time intervals; and, (2) cost status or the actual costs of work performed in accomplishing the tasks.

Specific and detailed guidance on preparing the forms and the narratives may be obtained from the GTR.

(End of clause)

2452.246-70 Inspection and acceptance.

As prescribed in 2446.502-70, insert the following clause in solicitations and contracts unless inspection and acceptance will be performed by someone other than the GTR.

Inspection and Acceptance (Apr 1984)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) identified in Block 11 of the SF-26, or other individual as designated by the Contracting Officer or GTR.

(End of clause)

2452.251-70 Contractor employee travel.

As prescribed in 2451.303, insert the following clause in all cost-reimbursement solicitations and contracts involving airline travel.

Contractor Employee Travel (Feb 1987)

(a) In the event that travel is required by this contract, the Contractor shall, to the maximum extent practical, utilize the travel discounts offered to Federal travelers, through use of contracted airline discount air fares, hotel and motel lodging rates, and car rental companies, which are available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the Contracting Officer.

(b) The Contractor shall provide the Contracting Officer with the names of those individuals who are required to travel per the contract terms. The Contracting Officer shall provide the Contractor with an identification letter for presentation to the participating vendors.

(c) The Contractor shall bill the Government for the actual costs incurred for travel in accordance with FAR 31.205-46, ensuring that other savings achieved through the use of any discount fares accrue to the Government.

(End of clause)

2452.270-70 Certification of status as a minority business enterprise.

As prescribed in 2470.103, insert the following solicitation provision in all solicitations.

Certification of Status as a Minority Business Enterprise (Apr 1984)

☐ Bidder, Offeror, or Supplier certifies that he or she ☐ is, ☐ is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the box applicable to you)

☐ Black Americans
☐ Hispanic Americans
☐ Native Americans
☐ Asian Pacific Americans
☐ Asian Indian Americans
☐ Hasidic Jewish Americans

(End of Provision)

29. Part 2453 is added to read as follows:

PART 2453—FORMS

Sec.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2453.000 Scope of part.

This part prescribes Agency forms for use in acquisition and contains requirements and information generally applicable to the forms.

Subpart 2453.2—Prescription of Forms

2453.213 Small purchases and other simplified purchase procedures.

2453.213-70 HUD Form 24007, Purchase/ Delivery Order Data File.

As prescribed in 2413.107(a) (4), HUD Form 24007 may be used by the Contracting Officer to record all relevant data pertaining to a small purchase, including recording written and oral quotations receive and documenting orders against GSA contracts.

2453.213-71 HUD Form 24001, Order for Supplies or Services.

As prescribed in 2413.505-2(a), Contracting Officers may use HUD Form 24001 in lieu of Optional Form 347 for individual purchases not exceeding the small purchase limit.

2453.213-72 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505-2(b), Contracting Officers shall use HUD Form 2542 for small purchases under the Acquired Property Program.

2453.215 Contracting by negotiation.

2453.215-70 HUD Form 4056, Abstract of Proposals.

As prescribed in 2415.411-70, HUD Form 4056 may be used by the Contracting Officer to record the names and addresses of offerors whose proposals are received before the stated deadline.

2453.217 Special contracting methods.

2453.217-70 HUD Form 730, Award/ Modification of Interagency Agreement.

As prescribed in 2417.504(b), HUD Form 730 shall be used by Contracting Officers when placing or modifying an order for supplies or services from another Government agency.

2453.227 Patents, data, and copyrights.

2453.227-70 HUD Form 770, Report of Inventions and Subcontracts.

As prescribed in 2427.305-2, HUD Form 770 shall be completed by the Contractor and submitted to the Contracting Officer upon completion of the contract.

2453.242 Contract administration.

2453.242-70 HUD Form 441.1, Project Management System Baseline Plan.

As described in 2442.1106(a), HUD Form 441.1 shall be used in contract for professional or technical services exceeding $100,000 by Contractors to show how they propose to carry out the contract work. The requirement may be waived by the Contracting Officer if he or she believes that the Statement of Work or Contractor's technical proposal are sufficiently specific or another acceptable means for project management is substituted.

2453.242-71 HUD Form 661.1, Project Management System Progress Report.

As prescribed in 2442.1106(a), HUD Form 661.1 shall be used in conjunction with the HUD Form 441.1 to monitor quantitative progress against the baseline plan. The 661.1 need not be used if use of HUD Form 441.1 has been

waived by the Contracting Officer; however, some acceptable means of progress reporting must be substituted.

2453.246 Quality assurance.

2453.246-70 HUD Form 9519, Acquired Property Inspection Report.

As prescribed in 2446.6, HUD Form 9519 shall be used to document inspection and acceptance under the Acquired Property Program.

SUBCHAPTER U—HUD SUPPLEMENTATIONS

PART 2470—SPECIAL PROGRAMS AFFECTING ACQUISITION

30. The authority citation for Part 2470 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2470.1—Minority Business Enterprises

31. Sections 2470.102 and 2470.103 are revised to read as follows:

2470.102 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

2470.103 Certification of status as a minority business enterprise-solution provision.

All contracting activities shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.270-70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

Dated: November 3, 1987.

Judith L. Hofmann,

Assistant Secretary for Administration.

[FR Doc. 87-28048 Filed 12-7-87; 8:45 am]

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Part IV

Department of Transportation

Research and Special Programs Administration

City of New York Regulations Governing Transportation of Hazardous Materials; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-22; Docket IRA-40A]

City of New York Regulations Governing Transportation of Hazardous Materials

Applicants: National Tank Truck Carriers, Inc. (NTTC) and American Trucking Associations, Inc. (ATA)

City Regulations Affected: City of New York Fire Department's Bureau of Fire Prevention Directives 3–76, 5–63, 6–76, and 7–74.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93–633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 170 through 179) issued thereunder.

Mode Affected: Highway.

Issue Date: December 2, 1987.

Ruling: The City of New York Fire Department's Bureau of Fire Protection (BFP) Directive 3–76 (except sections 13 and 16), Directive 6–76 (except section 25), Directive 7–74 (except sections 31 and 32 and subsections 2–2 and 2–3) and Directive 5–63 (except section 7) are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). Sections 13 and 16 of BFP Directive 3–76, section 25 of BFP Directive 6–76, sections 31 and 32 of BFP Directive 7–74, and section 7 of BFP Directive 5–63 are consistent with the HMTA and the HMR. No opinion is rendered concerning subsections 2–2 and 2–3 of BFP Directive 7–74.

Summary: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Directives 3–76, 5–63, 6–76, and 7–74 of the City of New York Fire Department's Bureau of Fire Prevention are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

For Further Information Contact: Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366–4362].

I. Background

A. Chronology

On April 13, 1987, the National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations, Inc. (ATA) applied for an administrative ruling to determine whether Directives 3–76, 5–63, 6–76, and 7–74 of the City of New York Fire Department's Bureau of Fire Prevention (BFP) are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder, and, therefore, preempted under section 112(a) of the HMTA. The BFP directives require tank truck carriers to receive permits before compressed gases, flammable and combustible liquids, and flammable and combustible mixtures are transported in the City of New York.

On May 18, 1987, OHMT published a Public Notice and Invitation To Comment soliciting public comments on the ATA/NTCC application. Detailed comments were filed by the applicants (together with the National Paint & Coatings Association, Inc.) and by the City of New York (the City). Comments in support of the ATA/NTCC position were filed by the Union Carbide Corporation and the New Jersey Turnpike Authority.

The applicants' request for a similar ruling concerning hazardous materials time, routing, escort, and other restrictions of the City of New York and the Port Authority of New York and New Jersey is the subject of a separate docket (IRA–40B) and will be addressed in a separate inconsistency ruling.

B. General Authority and Preemption under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any State or local action. The HMTA preempts only those State and local requirements that are "inconsistent."

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a State or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the State or local government may apply to OHMT for a waiver of preemption. (49 App. U.S.C. 1811(b); 49 CFR 107.215–107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A Federal court might find a non-Federal requirement statutorily preempted under another statute or preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following case law criteria for determining whether a State or local requirement is consistent:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude State or local action in this area, Congress apparently

intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

II. Preemptive Effect of Federal Motor Carrier Safety Regulations (FMCSR)

One of the applicants' arguments is that the BFP directives are inconsistent with the Federal Motor Carrier Safety Regulations (FMCSR) contained in 49 CFR Parts 391, 392, 393, and 396. The FMCSR generally were incorporated by reference into the HMR to allow the imposition of civil penalties and the use of additional enforcement tools provided by the HMTA. That action was accomplished by adding § 177.804 of the HMR, which states: "Motor Carriers and other persons subject to this part shall comply with 49 CFR Parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those rules apply." 43 FR 4858 (Feb. 6, 1978).

However, when the FMCSR were thereby incorporated by reference into the HMR, the Department declared that such action was not intended to change the intent, scope of application, or preemptive effects of the FMCSR as they existed under their original statutory authority (Interstate Commerce Act, 49 U.S.C. 304). *Ibid.* Therefore, RSPA will consider the preemptive effects of 49 CFR Parts 391 through 397 only to the extent those effects existed prior to their incorporation by reference by § 177.804 of the HMR, Inconsistency Ruling 2 (IR-2), 44 FR 75566, 75568 (Dec. 20, 1979), *unless* they are specifically incorporated by reference by another provision of the HMR.

49 CFR 390.30 sets out the standards to be used in determining the preemptive effect of FMCSR provisions which are incorporated into the HMR solely by § 177.804 of the HMR:

> Except as otherwise specifically indicated, Parts 390 through 397 of this subchapter are not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

The standards thus established are essentially identical to the first test used to determine preemption under the HMTA, i.e., the dual compliance test. Therefore, any FMCSR provision which is applicable solely through § 177.804 of the HMR preempts a State or local requirement only if compliance with both the latter and the FMCSR provision is impossible.

If, however, an FMCSR provision is specifically incorporated by reference into the HMR by some HMR provision other than § 177.804, that FMCSR provision is treated as an HMR provision, to the extent incorporated into the HMR, for purpose of preemption. The preemptive effect of such a provision, therefore, would be determined through application of both the "obstacle" and "dual compliance" tests.

For example, § 178.340-2(b) incorporates by reference the 49 CFR Part 393 requirements relating to parts and accessories applicable to all motor vehicles engaged in interstate commerce and makes them applicable to MC 306, MC 307 and MC 312 specification cargo tanks used for hazardous materials transportation. The parts and accessories requirements of 49 CFR Part 393, therefore, are HMR provisions and thus are compared with state and local requirements for preemption purposes under both the "obstacle" and "dual compliance" tests.

The reason for distinguishing between FMCSR provisions incorporated into the HMR by § 177.804 and those incorporated into the HMR by other HMR sections is that § 177.804 was the subject of a unique rulemaking. That section was issued by a final rule which was not preceded by a notice of proposed rulemaking (NPRM) because it involved merely agency practice and procedure. Under the Administrative Procedure Act (APA), that section, because of the unusual nature of its promulgation, could not result in substantive changes, such as a change in the preemptive effects of the regulations it incorporated into the HMR. Other HMR sections, such as § 178.340-2(b) which incorporate FMCSR provisions into the HMR were promulgated after public notice and comment, which resulted in full incorporation of those FMCSR provisions into the HMR for all purposes, including preemption under the HMTA.

III. Effect of Pending Litigation

The City requests that OHMT abstain from issuing an inconsistency ruling until the U.S. District Court for the Eastern District of New York reviews the record before the Court and makes findings in a pending court case, *National Paint & Coating Assn., Inc.* v. *City of New York* (E.D. N.Y. 84 CV 4525), in which ATA is a plaintiff.

The City contends that summary judgment was denied to plaintiffs in that case, and that plaintiffs had made preemption arguments similar to those raised in their inconsistency ruling application. It further argues that the Court has determined that there is no *per se* preemption of the challenged directives and that the Court will resolve the factual dispute as to actual inconsistency.

The City states:

> We find it rather extraordinary that petitioners would file the instant proceeding without reference to the fact that the very same legal arguments on the alleged inconsistency of the City's regulations with the HMTA were presented to and rejected by the District Court. Petitioner ATA was a party to the Court proceeding, and should not be allowed to ignore the Court's rulings which rejected these same unsupported and undocumented allegations. Although by filing this petition, petitioners seek another bite at the apple, their attempts to find a more favorable forum for their arguments should be rejected and the petition dismissed.

The City also says that inconsistency rulings commonly are sought prior to institution of judicial action as an alternative to litigation. It cites IR-1 (43 FR 16954, Apr. 20, 1978), IR-2 (44 FR 75566, Dec. 20, 1979), and IR-3 (46 FR 18918, Mar. 26, 1981) as examples of inconsistency rulings preceding rather than following judicial determinations of the legal issues. It points out that the District Court in the pending *National Paint* litigation, unlike the District Court in *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982) which requested IR-2, has not requested an OHMT inconsistency ruling. Finally, it urges OHMT to follow the example of IR-5 (47 FR 51991, Nov. 18, 1982) and abstain until the Court has ruled.

The heart of the ATA/NTTC responsive argument follows:

> Although the City has attempted to argue that DOT's inconsistency process is inappropriate because the *National Paint* litigation will decide issues of fact, it fails to provide a single example of a factual dispute that must be resolved before the issue of inconsistency can be determined. The technical expertise of RSPA allows it to make a comparison of the City Directives with the HMR and render an opinion as to whether the City Directives are inconsistent with Federal requirements. RSPA does not need a detailed factual record that (1) explains the HMR's technical requirements, or (2) presents information as to how the City regulations are interpreted, or (3) evaluates the relative safety provided by the City's scheme. In fact, in DOT's Notice of Decision on Appeal concerning IR-2, which the City has quoted to support its argument, (45 Fed. Reg. 71881, October 30, 1980), DOT stated that such information is irrelevant. Thus, the City fails to understand DOT's inconsistency process, does not recognize DOT's expertise, and attempts to greatly and needlessly erode the value of the inconsistency ruling process.

There are no underlying factual disputes that would prevent DOT from indicating "to affected parties, including concerned state and local jurisdictions, the Department's view as to the propriety of specific state and local hazardous material transportation requirements under the federal statute and regulatory scheme." Notice of Decision on Appeal, Inconsistency Ruling (IR-2), 45 *Fed. Reg.* 71882 (October 20, 1980). The District Court in the *National Paint* case will not hear the case until December of 1987 at the earliest. An Inconsistency Ruling by DOT would therefore provide the Court with the opinion of the agency charged by Congress with developing Hazardous Material Transportation Regulations. A ruling by DOT would clearly foster the purposes and objectives of the inconsistency process and, thereby, the underlying objectives of the HMTA. New York City's arguments that DOT's inconsistency process in inappropriate must, therefore, be rejected.

In recently adopting a broad construction of the "standing" requirements for inconsistency ruling applications, the Director of the OHMT summarized the purposes of the inconsistency ruling process:

> Through its inconsistency ruling process, the Research and Special Programs Administration (RSPA) provides a means of resolving, through nonbinding, advisory opinions, preemption issues arising under the HMTA. The process may alleviate expensive and time-consuming litigation of such issues and may produce an inherently consistent body of interpretations. It also enables RSPA to advise State and local governments concerning what types of requirements are consistent or inconsistent with the HMTA and the HMR, thereby possibly assisting in the avoidance of inconsistent enactments. * * * OHMT encourages use of its inconsistency ruling process to resolve preemption issues under the HMTA in as expeditious and inexpensive a manner as possible.

IR-21, 52 FR 37072 (Oct. 2, 1987).

In carrying out these purposes of inconsistency rulings, OHMT and its predecessor agencies have issued such rulings before judicial decisions (IR-19, 52 FR 24404 (June 30, 1987)) (criminal actions still pending), during the pendency of judicial proceedings (IR-2, *supra*,; IR-5, *supra;* IR-17, 51 FR 20925 (June 9, 1986)); after initial judicial proceedings (IR-19, *supra* (following Federal District Court denial of preliminary injunction)), and in the absence of judicial proceedings (e.g., IR-7 through IR-15, 49 FR 46632 (Nov. 27, 1984)).

In the matter at hand, one party to pending litigation has requested a ruling, and an opposing party has requested abstention. In that pending litigation, *National Paint & Coatings Assn., Inc. v. City of New York, supra,* United States District Court Judge Charles P. Sifton denied plaintiffs' motion for summary judgment in a memorandum opinion issued on November 4, 1985. In discussing various preemption issues, Judge Sifton at least twice addressed, as relevant to an inquiry on preemption, the intent of the Federal regulations or of the Federal agency issuing those regulations. Because the intent of OHMT and its regulations is a relevant factor in the pending litigation, it is appropriate that the Federal Court have the benefit of the Agency's views prior to making a final decision concerning the preemption issues.

This position is reinforced by a leading Supreme Court case on preemption which was cited and discussed by Judge Sifton. In that case, *Ray v. Atlantic Richfield Co.,* 435 U.S. 151 (1978), the Supreme Court explained the relevance of Federal agency action:

> Title I [of the Ports and Waterways Safety Act of 1972], however, merely authorizes and does not require the Secretary to issue regulations to implement the provisions of the Title; * * *. The relevant inquiry under Title I with respect to the State's power to impose a tug-escort rule is thus whether the Secretary has either promulgated his own tug requirement for Puget Sound tanker navigation or has decided that no such requirement should be imposed at all.

435 U.S. 171-2. This concept of a Federal agency defining through the exercise of its discretionary rulemaking authority the scope of the preemptive effects of its own regulations appears relevant under the HMTA, which like Title I of the Ports and Waterways Safety Act of 1972, provides the Secretary of Transportation with discretionary rulemaking authority. Section 105(a) of the HMTA states: "The Secretary may issue * * * regulations for the safe transportation in commerce of hazardous materials * * *. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate * * *." 49 App. U.S.C. 1804(a).

In light, therefore, of the relevance of OHMT's intent concerning the preemptive effect of its regulations, the existence of the inconsistency ruling process for the issuance of advisory opinions concerning such issues, and the pending of judicial proceedings in which an inconsistency ruling might be useful, OHMT will address the issues raised by the applicants.

IV. City of New York Fire Department's Bureau of Fire Prevention Directives

A. Overview

This proceeding concerns four directives issued by the City of New York Fire Department's Bureau of Fire Prevention (BFP). BFP directives 6-76 and 7-74 create permit systems that govern the use of tank trucks which transport combustible or flammable mixtures in New York City. BFP Directive 3-76 establishes a permit system for transporting in the City flammable and combustible liquids in open and closed body platform trucks, while Directive 5-63 creates a permit system for the transportation of compressed gases in the City.

The receipt of a permit under any one of the four BFP directives is conditioned upon fulfillment of the requirements of that particular directive.

Directive 3-76 requires each flammable and combustible mixture platform truck to adhere to engine fuel tank volume capacity restrictions (gasoline: 60 gallons; diesel fuel: 120 gallons). Additionally, the use of certain engine fuel tanks is prohibited unless they have been approved by Underwriters Laboratory (such approval designated by a permanently attached metal label). Directive 3-76 requires engine fuel tanks, even if they conform to DOT specifications, to be additionally inspected by an entity designated by the City Fire Department. Furthermore, Directive 3-76 imposes numerous additional equipment specifications (e.g., brakes, wiring, fire protection, engine exhaust, etc.) and mandates specific methods to haul containerized flammable or combustible materials.

To receive a permit under Directive 5-63, each owner of a vehicle transporting or delivering compressed gases must prepare and file with the Fire Commissioner an affidavit stating that the truck chassis is adequate to transport the truck body and its contents. Also, the manufacturer of each tank must submit an affidavit to prove that the truck was manufactured in accordance with DOT specifications and regulations. Furthermore, each driver of a compressed gas vehicle must pass certification tests administered by New York City. Finally, to ensure that Directive 5-63 is followed, each vehicle must be inspected by City employees.

Directive 6-76 governs the use of tank trucks that transport combustible mixtures. Under Directive 6-76, engine fuel tanks must adhere to volume capacity restrictions (gasoline: 60 gallons; diesel fuel: 120 gallons), and some must be approved by Underwriters Laboratory (such approval designated by a permanently attached metal label). Furthermore, each tank must be tested pursuant to the City's prescribed procedures. Also, Directive 6-76 imposes numerous equipment specifications (e.g., capacity indicator, relief valves, bumpers, brakes, etc.).

Directive 6–76 requires each driver of combustible mixture transport vehicles to pass certification tests, and the vehicle itself must be inspected for compliance with the requirements of the Directive. Finally, tank trucks that transport combustible petroleum products are prohibited from transporting any other type of material.

Directive 7–74 governs the use of tank trucks transporting flammable mixtures. To obtain a permit under Directive 7–74, each transport vehicle must be inspected by City authorities and the drivers of such vehicles must successfully complete certification testing. Numerous tank construction specifications are required by Directive 7–74 (e.g., engine exhaust, relief vents, mudguards, bumpers, etc.). Also, each tank must be tested and certified pursuant to New York's prescribed procedures. Similarly, fuel tanks must adhere to volume capacity restrictions (gasoline: 60 gallons; diesel fuel: 120 gallons), and some must be approved by Underwriters Laboratory (such approval designated by a permanently attached metal label). Furthermore, tank trucks carrying flammable liquids may only be unloaded pursuant to a City-approved gravity method. Directive 7–74 requires manufacturers to provide: (1) Detailed chassis specifications complete with drawings and a calibration chart as to tank capacity for each vehicle; and (2) an affidavit showing compliance with the Directive's requirements. Directive 7–76 prohibits the use of semi-trailers to haul flammable liquids and also prohibits tank trucks that carry flammable liquids from carrying other forms of materials.

The applicants contend that the directives are inconsistent for five general reasons:

(1) They impose highly technical and burdensome regulations that bear no relationship to the Federal requirements.

(2) They effectively ban from New York the vast majority of vehicles that transport hazardous materials.

(3) They would compel hazardous materials shipments to be transferred at the City's borders into specialized trucks meeting the special equipment, vehicle permit, and driver certification requirements of New York.

(4) Such increased loading will create risks of spillage, accidents, delays in transit and other significant safety concerns.

(5) The risks created by New York's regulations are imposed on the carriers, the drivers and workers involved in loading vehicles in jurisdictions surrounding the City, and the residents of those jurisdictions.

The applicants further allege that particular requirements of the directives are inconsistent with the HMTA and the HMR.

The City contends that the challenged regulations complement, rather than obstruct, the objectives of Congress in enacting the HMTA and that the City's regulations easily pass the "dual compliance" test. Thus, the City concludes, its regulations are consistent with the Federal standards.

The City asserts that its regulations are reasonable safety measures justified by its unique combination of conditions that create exceptional hazards to transportation of hazardous materials and high risks of catastrophic consequences if an accident involving such materials should occur.

B. Applicants' Arguments

ATA/NTTC contend that the City's regulations "impose grossly outdated, highly detailed, specialized standards that essentially replace DOT regulations, cause obvious hazards, necessitate increase[d] handling of hazardous materials and impose significant delays and redirections of truck traffic." They argue that the City regulations make uniform national standards impossible.

The gist of the applicants' argument that the BFP directives are inconsistent with the HMTA and the HMR follows:

> The operator cannot rely solely on DOT requirements to insure that his vehicle can be operated legally in or through New York City. But as Applicants have now learned after extensive, detailed scrutiny, the operator should not rely on City regulations to insure that his vehicle is safe. Yet, it is unreasonable to expect carriers or even manufacturers to make the *extensive dual evaluations and systems analysis* necessary to provide a truck that is both *legal* under New York City Standards and *safe* per DOT standards. Since the Fire Department's enforcement scheme does not consider DOT requirements and because many City specifications do not meet minimum DOT criteria, the City's separate regulatory regime, thus, greatly increases the risk that DOT requirements will not be met.
>
> Even a cursory review of the City's regulations clearly shows that the City has imposed a regulatory scheme that does not complement or supplement federal requirements. Instead, the Fire Department has devised its own independent regulatory system which not only differs greatly from but, fundamentally, *bears no relationship* to the federal regulatory scheme. Scrutiny of these separate Fire Department requirements clearly shows that they add nothing to safety but in fact, by creating confusion and imposing compliance obstacles for carriers and manufacturers, add significantly to the risk that vehicles will not meet safety requirements of the HMR. The City's regulations present a clear and present danger to the accomplishment and execution of the HMTA and the regulations issued thereunder.

The applicants present about sixty pages of detailed comparisons of City and DOT requirements in support of their contention that the BFP directives are inconsistent with the HMTA and the HMR. They present the following tabular summary of alleged inconsistencies:

SUMMARY OF CROSS-REFERENCES TO SPECIFIC INCONSISTENT PROVISIONS

Issue	City requirement	Applicable DOT provision
Ambiguity	Tank Mounting (FPD 7-74, section 10)	49 CFR 178.340.6
	Relief Vents (FPD 7-74, section 6)	49 CFR 178.340-6
	Filler Caps (FPD 7-74, section 7)	49 CFR 178.340.6
Bumpers	Requirements (FPD 7-74, section 11)	49 CFR 178.340-8(b)
		49 CFR 393.86
Inadequacy	Relief Vent Specifications (FPD 7-74, sections 3-8, 6-1, 6-2, 6-3); (FPD 6-76, section 7) Fusible.	49 CFR 178.341-4; 178.341-4(d)(1); 178.341-4(d)(2)
	Venting, flow testing, marking (none)	49 CFR 178.341-4
Permit	Requirements (FPD 7-74, section 1); (FPD 3-76, section 1-7); (FPD 5-63, section 1).	49 CFR 177.853; IR-2; IR-6
Certifications	Requirements (FPD 6-76, section 9, section 17); (FPD 7-74; section 24-2 section 24-4); (FPD 5-63, section 4).	49 CFR Parts 177; 178; IR-6; IR-8
Off-loading	Tank discharge (FPD 7-74, section 3-1)	49 CFR 178.853
	Tank Equipment (FPD 7-74, section 3-1)	178.340-8(a); 178.341.5
Tank Capacity	Requirements (FPD 7-74, section 4)	49 CFR 178.340-7(c)

SUMMARY OF CROSS-REFERENCES TO SPECIFIC INCONSISTENT PROVISIONS—Continued

Issue	City requirement	Applicable DOT provision
Tank Construction	Requirements (FPD 7-74, section 5-1, section 5-2) (FPD 6-76, section 5).	49 CFR 178.340-1 *et seq.*; 178.341; IR-2; 178.340-5; IR-2
Tank Tests	Requirements (FPD 7-74, section 8)	49 CFR 178.341-7; 177.824
Drive Axles	Requirements (FPD 7-74, section 15)	49 CFR 177.853
Chassis Weight	Excessive (FPD 7-74, section 23)	23 U.S.C. 127; 49 CFR 177.853
Truck Use	Dedicated Use (FPD 7-74, section 26) (FPD 6-76; section 26)	49 CFR 177.853
Fuel Tanks	Requirements (FPD 7-74, section 21)	49 CFR 393.65
	(FPD 6-76, section 20)	49 CFR 177.853
Brakes	Requirements (FPD 7-74, section 14)	49 CFR 393.40 thru 393.52
Electrical Systems	Requirements (FPD 6-76, section 15; FPD 7-74, section 19)	49 CFR 393.9-393.332(b)
Driver Certification	Requirements (FPD 7-73, section 2)	49 CFR 391.11 *et seq.*; 49 CFR 177.853
Cargo Loading/Ventilation	Platform Trucks (FPD 7-73, sections 7 and 14)	49 CFR 177.834-177.838
		49 CFR 177.853
Cylinder Transportation	Requirements (FPD 5-63, section 5)	49 CFR Part 177, Subpart B; 49 CFR 177.853
Signs	Requirements (FPD 5-63, section 6)	49 CFR 172.328; 172.332; IR-5
Prohibitions	Full Trailers (FPD 5-63, section 10)	49 CFR 177.801
	Certain Gases (FPD 5-63, section 10)	49 CFR 177.853

The cited inconsistency rulings and 49 CFR Parts 172 through 178 (HMR) provisions are relevant to HMTA/HMR preemption issues. The cited 49 CFR Part 393 provisions have been fully incorporated by reference into the HMR for preemption and other purposes by § 178.340-2(b) of the HMR, and consistency comparisons between them and the BFP directives under both the "dual compliance" and "obstacle" tests are appropriate.

On the other hand, as discussed above, 49 CFR Part 391 has not been incorporated by reference into the HMR for full preemption purposes and it, therefore, may be used for consistency comparisons only under the "dual compliance" test. Similarly, the relevance of 23 U.S.C. 127 to the HMTA or the HMR has not been discussed or demonstrated, and comparison of the BFP directives will not be made with that statute.

The following are among the more significant of those provisions listed in the tabular summary which the applicants allege are inconsistent with HMR provisions:

(1) BFP directives 6-76 and 7-74 require permits for flammable or combustible liquid-carrying tank trucks, the issuance of which permits is a matter of unfettered City discretion because no standards are specified therefor.

(2) BFP directives 6-76 and 7-74 require, in order to obtain a permit, completion of a detailed special form for each truck for which a permit is desired, detailed specifications or drawings thereof, and a physical inspection of each truck in New York City before a permit is issued.

(3) BFP directives 6-76 and 7-74 require certifications and affidavits different from and additional to those required in Parts 177 and 178 of the HMR, including subjective requirements, such as one that a chassis manufacturer file an affidavit "satisfactory to the Fire Commissioner" that the chassis is "adequate and suitable to transport the tank and its contents * * * in New York City."

(4) BFP Directive 7-74 requires that cargo tanks and tank trucks hauling flammable liquids meet specific equipment and operational requirements significantly different than those in the HMR, thereby banning from the City most tanks and vehicles currently used to transport flammable liquids in interstate commerce.

(5) BFP Directive 7-74 requires unloading of flammable products solely by an approved gravity method while the HMR allow mechanical offloading throughout the Nation. This, applicants allege, requires use of equipment (emergency shut-off valves) which cannot meet both the HMR and the Directive, requires carriers and drivers to use unfamiliar procedures and equipment, and finally requires downloading into drums outside the City of hazardous materials that cannot physically be offloaded by gravity—thereby increasing hazardous materials handling and trips and expanding risks to other jurisdictions.

(6) That Directive, unlike § 178.341(d)(1) of the HMR, fails to impose a minimum emergency venting capacity, and it also has different safety relief valve requirements than § 178.341-4(d)(2) of the HMR.

(7) In addition, that Directive limits the capacity of tanks used for transport of hazardous materials, and prohibits the use of cargo tanks with double bulkheads and an airspace between compartments to transport different commodities—even though authorized by § 178.340-7(c) of the HMR. The applicants provide the following summary of the impact of these City restrictions:

> Standard industry tank capacity, compartment size and configuration under the HMR are wholly incompatible with City-required tank capacity, compartment size and configuration, so that bulk shipments in interstate commerce destined for or shipped through New York City must be down-loaded to special tank trucks or to drums (or up-loaded for outbound shipments originating in the City). Thus, the City has undermined the safety of hazardous material transportation (both in New York City and especially in surrounding localities and for drivers) by forcing increased handling of hazardous materials and increased frequency of shipments. Through these unique restrictions the Fire Department has unilaterally rendered impossible national uniformity of hazardous material transportation regulations.

(8) Directive 7-74 authorizes tank construction with types of steel not authorized by the HMR and forbids tank construction with aluminum, which is authorized by the HMR.

(9) That Directive requires various tank tests totally independent of the HMR which result in tanks designed, manufactured and tested in accordance with the HMR being banned from use in New York City.

(10) A bumper meeting the dimensional, strength and weight specifications of Directive 7-74 would

not meet the bumper performance standards of § 178.340–8(b) of the HMR.

(11) That Directive's requirement of a double reduction drive axle with a gear ratio of not less than 9.5 to 1 for vehicles carrying flammable liquids in bulk results in such vehicles not being able to go more than 35 to 40 mph, thereby rendering them unsafe for Interstate Highway and other transportation and conflicting with the expediting requirements of § 177.853 of the HMR.

(12) Directive 7–74 also bans shipments of flammable liquids in semi-trailer equipment, a means of transportation allowed and regulated by the HMR.

(13) In addition, that Directive adds another non-HMR requirement by requiring tank trucks used for transportation of flammable liquids to be used exclusively for that purpose, which requirement delays shipments until a dedicated vehicle is available. The applicants describe the interplay of that requirement with other Directive 7–74 requirements:

> This built-in disincentive for tank truck safety caused by the City dedicated equipment requirement is compounded by the City requirement that cargo tanks be constructed of steel and be compartmentalized. Using water based cleaning solutions to clean the inside of steel cargo tanks can cause rust and accelerate tank deterioration, affecting not only the integrity and life expectancy of the tank but increasing the possibility of rust contaminating future cargo. Compartmentalization required by section 5 of the City directive also makes the cleaning of tanks more difficult and time-consuming. Since rust contamination of cargo is a liability for the carrier and the hourly labor used for tank cleaning is part of the carrier's direct operating cost, the combined effect of the Fire Department's regulation is an economic incentive for the operator to cut back on tank cleaning. This increases the risks of product contamination and of mixing incompatible flammable liquids.

(14) BFP Directive 6–76 bans many trucks which transport flammable liquids throughout the United States in accordance with HMR standards from carrying combustible liquids in New York City. Specifically DOT-approved MC306 vehicles are prohibited by virtue of the Directive's different tank construction and venting requirements.

(15) BFP Directive 6–76 contains combustible liquid tank exclusive use provisions similar to, and with effects similar to, BFP Directive 7–74.

(16) BFP Directives 7–74 and 6–76 both require an Underwriter's Laboratory (UL) certification of, and metal plate for, engine fuel tanks which already conform to § 393.65 of the HMR—or an independent inspection and certification of such fuel tanks.

(17) Both directives also impose independent requirements for electrical systems, and Directive 7–74 imposes independent brake requirements. These topics are covered in detail and quite differently by HMR provisions.

(18) BFP Directive 3–76 contains a series of independent City requirements for non-tank vehicles transporting flammable or combustible liquids. The requirements vary significantly from the HMR and relate to permit requirements, use restrictions, numerous technical specifications, painting, and truck body ventilation. Allegedly, they ban all non-tank vehicles used to transport flammable liquids in interstate commerce and thereby compel downloading of hazardous materials at the City border.

(19) Similarly, BFP Directive 5–63 imposes a series of independent requirements not related to the HMR for vehicles transporting or delivering compressed gases. That Directive requires permits and tank certifications, imposes cylinder transportation requirements, and imposes special marking requirements. In addition, that Directive bans certain transport of 25 different gases and provides the Fire Commissioner with authority to ban shipments of any gas "deemed to be hazardous."

(20) In addition, BFP directives 6–76, 5–63 and 7–74 require that trucks used to carry certain hazardous materials in the City must be under the care and supervision of a person holding a certificate of fitness issued by the Fire Commissioner. Applicants allege the City's driver certification standards are unrelated to DOT's requirements (including § 177.804 of the HMR and 49 CFR 391.11 *et seq.*) and are less stringent with respect to a driver's age, understanding of English, character, habits and past employment. Applicants allege that the City's driver examination requirements are not related to particular urban or New York City factors. They allege that these test requirements cause experienced drivers authorized by DOT to operate throughout the Nation to stop at the City boundary and delay their cargo while passing the City examination or securing the services of a City-approved driver—allegedly in conflict with § 177.853 of the HMR.

(21) Finally, applicants allege that the City extends its equipment requirements into the area of its bans and restrictions by limiting pickups and deliveries of flammable and combustible materials to City-specification vehicles and imposing routing, time-of-day and other restrictions only on non-City-specification vehicles. They cite Section II.D of the City's routing regulations:

> Motor vehicles conforming to Fire Department Specifications and under Fire Department Permit may be used to transport allowable hazardous cargo in accordance with Chapter 19 Adm. Code and the rules and regulations of the Fire Commissioner without conformance to the routing, time, escorts and other restrictions in these regulations, and such "permitted" vehicles must be used for deliveries for storage and/or use in the City.

C. City's Arguments

The City denies virtually none of the applicants' factual allegations but advances three arguments in support of its cargo containment system, equipment and related requirements: (1) Non-uniform regulations can meet Congress' safety objective, (2) the City's regulations pass the "dual compliance" test, and (3) the City's regulations promote safety in a uniquely dense urban environment. The following are the details of each of those arguments:

(1) The City argues that Congress did not compel national uniformity when it enacted the HMTA. It argues that the HMTA allows local regulations stricter than the Federal requirements in order to further a legitimate local interest in safety. It cites the District Court's denial of summary judgment in the pending *National Paint* litigation as holding that the Federal standard on tank truck construction does not preclude a higher degree of protection than that provided by the Federal regulations.

The City contends that the language and legislative history of the HMTA indicate that Congress' chief goal in enacting the HMTA was not uniformity and that State or local laws which merely vary from Federal law are not preempted solely by virtue of that variance. The City points to the stronger preemption language of the Federal Railroad Safety Act (45 U.S.C. 434) as an example of language Congress might have used to compel greater uniformity under the HMTA than it did. It concludes that deviations from national uniformity which are stricter than Federal requirements are consistent with the HMTA's purpose "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 App. U.S.C. 1801).

(2) The City contends that while its regulations differ from the Federal regulations, they do not prevent compliance therewith. It asserts that trucks can meet the City's construction and equipment requirements without violating the HMR. It argues that its

driver certification requirements are compatible with, and merely supplement, the requirements in 49 CFR Part 391, as authorized by 49 CFR 390.30.

Specifically, the City states that its equipment requirements do not conflict with section 178.341 of the HMR (on MC–306 tank trucks) or 49 CFR part 393 (on other equipment). It points out that 49 CFR 178.340–1 provides that the MC–306 truck requirements are "minimum" and argues that this authorizes stricter load requirements. On the "other equipment" requirement, the City quotes 49 CFR 393.2: "Nothing contained in Parts 390 through 397 of this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by Parts 390 through 397 of this subchapter, provided such equipment and accessories do not decrease the safety of the operation of the motor vehicle on which they are used."

The City alleges that its equipment requirements are intended to increase safety, that applicants have not shown that they do not do so, that any actual conflicts can only be determined at trial, and that there is no basis for concluding that compliance with both the City and Federal regulations is impossible.

(3) Finally, the City argues that its regulations promote safety in a uniquely dense urban environment. The City refers to an affidavit of BFP Chief Joseph DeMeo which was filed with the Court in the pending litigation and set forth the City's rationale for several of its requirements. The City also cites studies by the National Transportation Safety Board (NTSB), the Office of Technology Assessment (OTA), and a City contractor (Arthur D. Little, Inc.) to justify its regulations. The City concludes that its permit and equipment regulations promote safety and are not inconsistent with the HMTA or the HMR under either the "obstacle" or "dual compliance" tests.

D. Applicants' Rebuttal Arguments

In response to the foregoing arguments of the City, ATA/NTTC filed rebuttal comments. The applicants advance the following three arguments:

(1) They argue that the City's assertion that Congress never intended to occupy the entire field of hazardous materials transportation is irrelevant since applicants do not rely on such an assertion of total Federal preemption. They assert that the City's claim that its regulations are "reasonable" is irrelevant because the issue is consistency, not reasonableness. They further argue that the City distorted section 102 of the HMTA by quoting only its second half and ignoring its reference to improving "the regulatory and enforcement authority of the *Secretary of Transportation*" [applicants' emphasis]. They conclude:

> Congress delegated to DOT, not the New York City Fire Department, the responsibility for developing regulations that protect the nation against the risks inherent in the transportation of hazardous materials. It is irrelevant that *the City* somehow believes that its regulations promote safety and are stricter than federal requirements. What is relevant, and what the city has ignored, is that the existence and enforcement of the City's regulatory scheme seriously detracts from compliance with the HMR.

Finally, applicants state that the District Court, in denying plaintiffs' motion for summary judgment in the pending litigation, said that plaintiffs were not arguing that the City's regulations are inconsistent with Federal law.

(2) Applicants allege that the City's requirements do not merely add to, but often conflict with, the HMR. Additionally, they argue that the City's regulations constitute an independent set of requirements that replace DOT-specification vehicles with City-specification vehicles and also add a confusing layer of regulation to the Federal cargo containment requirements, an area in which there is need for national uniformity. They add that the City's referral to § 178.340–3 of the HMR ignores all the other MC–306 cargo tank requirements in § 178.340 *et seq.* which must be considered for inconsistency purposes.

(3) Finally, Applicants allege that the City has failed to show it has a uniquely dense urban environment different from that of other major cities or that its requirements provide greater safety than the HMR. They contend that the studies cited by the City to justify its rules either are fallacious or merely provide a basis for second-guessing the HMR requirements. They argue that prior inconsistency rulings indicate that the level of safety is an appropriate issue in waiver of preemption cases but not in inconsistency determinations and that alleged inadequacies of the HMR can be addressed in petitions for rulemaking under 49 CFR 106.31.

E. Ruling

The HMTA, like many Federal statutes, effectively authorizes the implementing agency to determine the scope of its regulatory effort and the extent of preemption thereby created. Unlike the Federal Railroad Safety Act, *supra*, the HMTA does not create specific detailed substantive requirements but merely delegates authority to the Secretary of Transportation to do so.

As in *Ray v. Atlantic Richfield Co., supra*, a critical issue here is whether the Secretary of Transportation, in the exercise of the Secretary's statutory authority, has promulgated applicable requirements or determined that none should be imposed. Although the HMTA itself consists of only fourteen succinct sections, the HMR issued thereunder consist of well over 1,300 pages of complex and detailed regulations. It is apparent, therefore, that the Secretary, through RSPA, has extensively exercised the HMTA authority to issue "regulations for the safe transportation in commerce of hazardous materials." 49 App. U.S.C. 1804.

The ultimate issue here is whether the City's hazardous materials transportation-related cargo containment system, equipment and related requirements are consistent with the HMTA and the HMR. That issue, in turn, depends upon the extent to which (1) RSPA has promulgated cargo containment system, equipment and related regulations, (2) RSPA has indicated that those HMR provisions partially or totally occupy that regulatory field, and (3) the City's requirements operate in support of, and not in opposition to, the goals and purpose of the HMTA and the HMR—in light of RSPA's actions.

RSPA, OHMT and their predecessor agencies have addressed these issues in several inconsistency rulings and actions on appeals of inconsistency rulings. Since as early as IR–2, in 1979, it has been clear that hazardous materials transportation cargo containment systems, packagings, accessories, construction tests, equipment and hazard warning systems are areas of exclusive Federal jurisdiction because of the total occupancy of those fields by the HMR:

> There are also certain areas where the need for national uniformity is so crucial and the scope of Federal regulation is so pervasive that it is difficult to envision any situation where State or local regulation would not present an obstacle to the accomplishment and execution of the HMTA and the Hazardous Materials Regulations. Cargo containment systems is one area where the MTB believes this to be true. The Hazardous Materials Regulations contain extensive requirements for the packagings necessary for the safe transportation of hazardous materials. The MTB has looked at specific commodities and determined what type of container must be used to move them, including, where appropriate, what types of accessories are required, what types of construction tests must be satisfactorily performed, etc. Uniform standards in this

area ensure safe efficient interstate transportation. State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations. Hazard warning systems are another area where MTB perceives the Federal role to be exclusive. The MTB has thoroughly considered this subject and has issued regulations on marking and labeling of packages and placarding of vehicles in order to communicate the hazards of the materials contained therein. The effectiveness of these systems depends to a large degree on educating the public, especially emergency response personnel. In order to widely disseminate information on its systems, the MTB, among other things, conducts and supports educational programs and distributes informational literature. Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information.

IR-2, *supra*, at 75568. Virtually identical language concerning preemption of these areas was published in the preamble to a series of nine related inconsistency rulings (IR-7 through IR-15). 49 FR 46632 at 46633, Nov. 27, 1984. That same preamble discussion indicated that:

> * * * Congress recognized that the Department's efforts in hazardous materials transportation regulation lacked coordination by being divided among the various transportation modes, and lacked completeness because of gaps in the Department's authority, most notably in the area of manufacturing and preparation of packagings used to transport these materials. (S. Rep. No. 1192, 93d Cong., 2d Sess. 1-2, 7-9 (1974)).

Ibid.

In the interim, the Materials Transportation Bureau (predecessor of RSPA), in issuing a rulemaking on routing of radioactive materials, addressed problems arising out of different jurisdictions' imposing equipment requirements:

> The existence of State or local requirements for special equipment may effectively dictate the continuous use of the equipment in all jurisdictions. Varying requirements between jurisdictions pose additional problems that may necessitate equipment changes and delays *en route*, or avoidance of an otherwise desirable route. Containment and packaging equipment are themselves exclusively set by Federal regulations.

46 FR 5314 (Jan. 19, 1981).

Of particular relevance to those New York City cargo containment system and equipment requirements which provide discretionary authority to the Fire Commissioner is the following language from IR-8:

Under the "obstacle" test, however, it is possible to reach a definite conclusion. As shown above, State rules requiring special equipment pose an obstacle to the two major Congressional purposes underlying the HMTA. Even greater, then, is the obstacle posed by a State rule which sets no specific requirements but leaves the matter wholly to the discretion of a State official. For this reason and those states in the discussion of highway shipments *supra*, the Rule 4 equipment requirements for rail shipments constitute an obstacle to the accomplishment and execution of the HMTA.

49 FR 46637 at 46638 (Nov. 27, 1984). That Inconsistency Ruling also cited IR-2 for the proposition that the "exclusive Federal role in hazardous materials containment systems has long been established." *Ibid.* at 46642. Thus, in IR-8 a Michigan requirement for a certificate of compliance for cargo containers was found inconsistent as improperly imposing additional packaging standards.

Similarly, in IR-8 a Michigan requirement for physical testing of containers also was found inconsistent. Michigan's contention that it could impose such a requirement because of the alleged inadequacy of Federal safety regulations to meet local conditions was rejected because "[t]his completely undermines the regulatory system mandated by the HMTA." *Ibid.* It was indicated in IR-8 that if Michigan believed the Federal regulations were inadequate, it had the options of filing a petition for rulemaking under 49 CFR 106.31 or applying for a waiver of preemption under 49 CFR 107.215. *Ibid.*

The findings of IR-8 were affirmed on appeal by the Administrator of RSPA. IR-8 (Appeal) (52 FR 13000, Apr. 20, 1987). In that decision, the Administrator cited IR-2 for the proposition that "State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations." *Ibid.* at 13006, quoting IR-2, *supra*, at 75568.

In affirming IR-8, the Administrator also addressed the issue of a state official having discretionary authority concerning equipment:

> Again, the Ruling was based upon the State Fire Marshal's unfettered discretion under Rule 4 to require different communications equipment. While that official's decisions might be consistent, they could as readily be inconsistent. Thus, I concur with the finding of inconsistency on the basis that a state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA. Therefore, I find Rule 4 to be inconsistent with the HMTA or the HMR and thus preempted.

Ibid. at 13003.

Furthermore, the Administrator rejected Michigan's contention that local conditions justified a finding of consistency:

> Sixth, Michigan appeals the finding in IR-8 that Rules 5(f) and (g) of the SFSB (Rules 5(e) and (f) of the DPH) are inconsistent. These rules impose container testing standards which exceed those of the NRC, which are incorporated in the HMR (49 CFR 173.416). The State justifies them on the basis of its unique geographical situation, its dependence on very high major bridges, its busy inland waterway system, and the depth of the Great Lakes. It contends that these conditions justify more stringent container standards to assure container integrity in the event of an accident.
>
> While these conditions might provide a basis for a rulemaking petition or for a 49 CFR 107.215 application for waiver of preemption, they do not provide a justification for overriding the complete Federal preemption of packaging design, construction and equipment requirements for hazardous materials transportation. Thus, I find Rues 5(e) and (f) of the SFSB (DPH Rules 5(e) and (f) to be inconsistent.

Ibid. at 13006.

In IR-15 (49 FR 46660, Nov. 27, 1984), Vermont's requirements for a certificate of compliance concerning the container and a certification that the vehicle had been inspected were both determined to be inconsistent with the HMTA and the HMR.

Because New York City's containment system and equipment requirements are intimately tied to a permitting system, the following comments of the OHMT Director in IR-19 (52 FR 24404, June 30, 1987) (in which a Nevada permitting system was found inconsistent) are relevant to the issues here:

> Thus, the effect of that regulation is to require a PSC permit for hazardous materials transportation activities even if those activities are in full compliance with the HMTA and HMR. Activities in compliance with the HMTA and the HMR are presumptively safe, and permitting requirements relating to them cause confusion and delay and thus are inconsistent with the HMTA and the HMR under the "obstacle" test.
>
> * * * * * *
>
> RSPA has determined what information and documentation requirements are needed for the safe transportation of hazardous materials, and thus state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the objectives of the HMTA and the HMR, and thus are inconsistent with them. IR-2, 44 FR 75566 (Dec. 20, 1979); IR-6, 48 FR 760 (Jan. 6, 1983).

The PSC's broad discretion, especially in light of the burdensome and open-ended application requirements, translates into delay—or at least the overwhelming prospect for delay. The Nevada permitting process makes delay beyond the timeframes contemplated in the HMR possible, even likely. * * * Therefore, the entire permitting process contained in the Nevada regulations is inconsistent with 49 CFR 177.853 and 174.14 and thus is preempted.

IR-19, *supra* at 24407, 24408, 24409.

Similarly relevant is the following discussion in IR-20 (52 *Fed. Reg.* 24396, June 30, 1987), in which regulations of the Triborough Bridge and Tunnel Authority were found inconsistent:

* * * a permit or approval system * * * is not *per se* inconsistent, but its consistency depends upon the consistency of the requirements that must be complied with in order to obtain approval to transport. IR-2, 44 FR 75566 (Dec. 20, 1979); IR-3, *supra.* Although hazardous materials transportation approval requirements identical to Federal requirements are consistent (IR-14, 49 FR 46656 (Nov. 27, 1984); IR-15, 49 FR 46660 (Nov. 27, 1984), such transportation approval requirements different from or additional to Federal requirements are inconsistent. IR-8, FR 46637 (Nov. 27, 1984); IR-8(A), 52 FR 1300 (Apr. 20, 1987); IR-10, *supra;* IR-11, 49 FR 46647 (Nov. 27, 1984); IR-12, 49 FR 46650 (Nov. 27, 1984); IR-13, 49 FR 46653 (Nov. 27, 1984); IR-15, *supra;* IR-15(A), 52 FR 13062 (Apr. 20, 1987).

* * * * *

Paragraph (a) requires permission from the bridge's facility supervisor (or his authorized representative) at least two hours before intended travel over the bridge. Because no standards are set forth defining when permission will or will not be granted, the facility supervisor (or authorized representative) has the type of unfettered discretion to prohibit transportation which has been found previously to be inconsistent with the HMTA and the HMR. IR-8(A), *supra* at 13003, 13006; IR-15(A), *supra* at 13063; IR-18, 522 FR 200 at 203 (Jan. 2, 1987).

Ibid. at 24397-8.

In the most recent inconsistency ruling, IR-21 *supra,* the Director of OHMT found inconsistent Connecticut requirements for a shipper certification of compliance with Nuclear Regulatory Commission and DOT regulations and a carrier certification concerning proper loading, blocking and securing and compliance with DOT regulations:

Requirements for information or documentation in excess of the HMR requirements create an additional burden or delay and are inconsistent with the HMTA and the HMR. IR-2, IR-6, IR-8, IR-8(Appeal), IR-15, IR-15 (Appeal), IR-18, IR-19, all *supra.* Specifically, requirements for certification to a state of a shipment's compliance with law are redundant, constitute obstacles to the HMTA, and thus are inconsistent.

Ibid. at 37075.

In summary, RSPA, OHMT and their predecessor agencies have established in a series of inconsistency rulings issued during the past decade the principle that the HMR provisions concerning hazardous materials transportation cargo containment systems, equipment, accessories and packagings, and the certification, marking, testing and permitting of same, have fully occupied that regulatory field. Those subjects are the exclusive province of the Federal Government. As a result, state or local requirements concerning those subjects detract from and create confusion concerning the Federal requirements, are inconsistent with the HMTA and the HMR, and, therefore, are preempted under section 112(a) of the HMTA. Similarly, these rulings have demonstrated RSPA's position that permitting systems and information or documentation requirements relating to or containing such requirements likewise are inconsistent with the HMTA and the HMR and, therefore, preempted.

Application of these principles to the four BFP directives at issue here, the provisions of which are outlined in the "Overview" discussion at IV. A above, results in findings that virtually all of the provisions of those directives are "triggered" by the transportation of hazardous materials (i.e., they do not apply to all vehicles or all trucks but only to those carrying specified hazardous materials), fall within these exclusively Federal regulatory areas, and, therefore, are inconsistent with the HMTA and the HMR and thus preempted. No comparison with FMCSR provisions is necessary.

BFP Directive 3-76 applies to open or closed body platform trucks transporting inflammable or combustible liquids or mixtures. The section titles of this and the other BFP directives fairly reflect their contents. The 16 section titles of Directive 3-76 are: Permit, Bodies, Cab, Engine Exhaust System, Engine Fuel Tanks, Wiring, Racks, Trailers, Paint, Fire Protection, Brakes, Smoking, Rags, Use of Truck, Modifications, and Savings Clause. The truck permit requirements relate to exclusively Federal areas, provide the Fire commissioner with unfettered discretion, and thus are inconsistent. With the following exceptions, all the Directive's sections are inextricably tied to the inconsistent permitting requirements, contain requirements in exclusively Federal areas, or both, and, therefore, are inconsistent with the HMTA and the HMR. On the basis of the record here, section 13 (Rags), which requires rags or cotton waste to be kept in a covered metal box, and section 16 (Savings Clause) do not impinge on areas of exclusive Federal jurisdiction are consistent with the HMTA and the HMR.

BFP Directive 6-76 applies to tank trucks transporting combustible mixtures. Its 28 section titles are: Permit, Certificate of Fitness, Gravity Tank Truck, Tank Capacity, Tank Construction, Capacity Indicator, Relief Vents, Covers, Test, Inside Emergency Valves, Outside Piping and Valves, Mounting, Bumpers, Bucket Boxes and Running Boards, Wiring, Brakes, Chassis Weight, CAB, Engine Exhaust System, Engine Fuel Tank, Painting and, Marking, Fire Protection, Cans, Trailers, Smoking, Use of Trucks, Modifications, and Saving Clause. Again, the truck permit requirements relate to exclusively Federal areas, provide the Fire Commissioner with unfettered discretion, and thus are inconsistent. With the following exceptions, all the Directive's sections are inextricably tied to the inconsistent permitting requirements, contain requirements in exclusively Federal areas, or both, and, therefore, are inconsistent with the HMTA and the HMR. On the basis of the record here, section 25 (Smoking), which prohibits smoking on tank trucks, and section 28 (Saving Clause) are consistent with the HMTA and the HMR.

BFP Directive 7-74 applies to tank trucks transporting flammable liquids or mixtures. Its 33 section titles are Permit, Certificate of Fitness, Method of Discharge, Tank Capacity, Tank Construction, Relief Vents, Covers and Loading Systems, Test, Static Eliminator, Mounting, Bumpers, Mudguards, Engine Exhaust Systems, Brakes, Axles, Engine, Tires, Transmission, Electrical Equipment, Cab, Engine Fuel Tank, Running Boards, Chassis Weight, Affidavits, Guarantee, Use of Truck, Identification, Painting and Marking, Types of Chassis Permitted, Fire Protection, Smoking, Storage of Tank Trucks, and Modification. Again the tank truck permit requirements relate to exclusively Federal areas, provide the Fire Commissioner with unfettered discretion, and thus are inconsistent. With the following exceptions, all the Directive's sections are inextricably tied to the inconsistent permitting requirements, contain requirements in exclusively Federal areas, or both, and, therefore, are inconsistent with the HMTA and the HMR. On the basis of the record here, section 31 (Smoking), which prohibits smoking in or near certain tank trucks and other vehicles, and section 32 (Storage of Tank Trucks), which prohibits overnight storage of certain loaded tank trucks, are consistent with the HMTA and the HMR. Although subsection 2-1 of section 2 (Certificate of Fitness) relates to the permitting system and the equipment requirements and thus is inconsistent, no decision is being rendered with respect to subsections 2-2

and 2–3 concerning certificate of fitness requirements. The record here inadequately addresses those issues, and similar issues are open for public comment in Docket No. IRA–42, California Department of Motor Vehicles Application for Inconsistency Ruling, 52 FR 43830, Nov. 16, 1987.

BFP Directive 5–63 applies to vehicles transporting compressed gases. Its 11 section titles are: Permits, Certificate of Fitness, Container Construction, Tank Trucks, Transportation of Cylinders, Signs or Placards, Smoking, Fire Protection, Permit Fees, Prohibited for Use, and Electrical Equipment. Again the truck permit requirements relate to exclusively Federal areas, provide the Fire Commissioner with unfettered discretion, and thus are inconsistent. With the exception of section 7, all the Directive's sections are inextricably tied to the inconsistent permitting requirements, contain requirements in exclusively Federal areas, or both, and, therefore, are inconsistent with the HMTA and the HMR. On the basis of the record here, section 7 (Smoking), which prohibits smoking on or near vehicles used for flammable compressed gases, is consistent with the HMTA and the HMR.

In summary, the City has created its own independent set of cargo containment, equipment and related requirements which overlap the extensive HMR requirements, which are likely to encourage noncompliance with the HMR, and which concern subjects that RSPA has determined are its exclusive province under the HMTA.

The City misconstrues the purpose of the language in § 178.340–1(b) of the HMR and in 49 CFR 393.2, which respectively state that cargo tank "specification requirements are minimum requirements," and that the FMCSR do not prohibit the use of consistent additional equipment and accessories. These regulations provide discretion to carriers but do not constitute a grant of authority to State or local governments to impose additional cargo containment system, equipment or related requirements on carriers of hazardous materials.

The City's response that it is providing for greater safety—particularly in light of its allegedly unique local conditions—must be placed in its proper context and, more significantly, does not provide an adequate basis on which to find its requirements consistent.

First, virtually every urban and suburban jurisdiction in the United States has a population density which is a matter of concern in planning for, and regulating, hazardous materials transportation.

Second, consideration of any unique population density of New York City must be accompanied by consideration of the City's unique location as a crossroad for a large percentage of hazardous materials transportation between both New England and Long Island and the rest of the Nation; delays and diversions of such transportation are of great safety concern.

Third, and most significantly, this response is irrelevant. To the extent that the City believes the HMR are inadequate, the City may file a petition for rulemaking with OHMT under 49 CFR 106.31 or otherwise participate in OHMT rulemakings—as it is participating in a major ongoing rulemaking concerning requirements for cargo tanks. (Notice of Proposed Rulemaking, 50 FR 37767, Sept. 17, 1985; Amendment, 50 FR 49866, Dec. 5, 1985). That rulemaking, for example, is the appropriate forum for OHMT consideration of the City's Arthur D. Little, Inc. study comparing the City regulations and the HMR, and that consideration is taking place. To the extent that the City believes its allegedly unique circumstances require a different regulatory approach, it may request a waiver of preemption under section 112(b) of the HMTA (49 App. U.S.C. 1811(b)) and 49 CFR 107.215.

An additional reason for the inconsistency of the BFP directives is their propensity to cause significant delays of hazardous materials transportation. As the following excerpts from prior inconsistency proceedings indicate, delay of such transportation has been of serious concern to RSPA, OHMT and their predecessors:

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation.

IR–2, *supra* at 75571.

> The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns.

IR–3, *supra* at 18921.

> Since safety risks are "inherent in the transportation of hazardous materials in commerce" [49 U.S.C. 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame.

IR–6, *supra* at 765; see also IR–16, 50 FR 20872 at 20879 (May 20, 1985).

> While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law.

IR–8 (Appeal), *supra* at 13003; quoted, IR–19, 52 FR 24404 at 24409 (June 30, 1987).

Among the provisions found inconsistent because of their propensities to cause delay have been a state requirement for a caboose on certain trains carrying hazardous materials, *Missouri Pacific RR Co. v. Railroad Commission of Texas,* Civ. No. A–86–CA569 (W.D. Tex. 1987); time-consuming state permitting processes with no definite decision dates, IR–19, *supra,* IR–21, *supra;* two-hour advance approval requirements with no demonstrated purpose, IR–20, *supra;* IR–21, *supra;* time provisions for permit applications and decisions, IR–21, *supra;* and radioactive materials transportation requirements unnecessarily delaying transportation, IR–8 (Appeal), IR–18, IR–21, all *supra.*

Applicants here have made the unrebutted assertions that the BFP directives create delay by requiring uploading from and downloading of hazardous cargo into specialized City-approved trucks, waits for City inspections necessary to obtain BFP permits, and delays to obtain required specifications, certifications and affidavits. The applicants allege that the unloading and loading cause unnecessary delays in transit and impose risks of spillage and accidents on carriers, drivers and workers involved in such operations in Connecticut, New Jersey and local jurisdictions surrounding the City and on residents of those jurisdictions.

Such delays aggravate the existing delay problems caused by the City's time restrictions and complained of by the New Jersey Turnpike Authority. In a rebuttal comment in this matter, the Chairman of that Authority stated:

> The New Jersey Turnpike Authority has constantly expressed concern that these regulations were promulgated without consultation with adjacent State and local agencies. The New Jersey Turnpike Authority, operating the New Jersey Turnpike, has the responsibility to maintain a safe and efficient roadway, which roadway represents the main transportation corridor between Philadelphia and New York and the Northeast Transportation Network. Thus, of course, there is a vital and important interest by the Turnpike Authority in maintaining its

responsibility that transportation proceed efficiently and safely through its facilities.

The promulgation of New York City and Port Authority regulations causes concern since the time periods, that vehicles carrying certain classes of hazardous and toxic materials may travel, are so restricted as to cause vehicles to queue up at facilities of the Turnpike while awaiting to enter New York through the various Port Authority facilities. There is concern by the Turnpike Authority that this situation can result in a congregation of vehicles, particularly trucks at Turnpike Authority service areas.

As indicated below, the City has linked its time and routing restrictions to its cargo containment system, equipment and related requirements.

In summary, the hazardous materials transportation delays caused by the four BFP directives constitute an independent basis for finding them to be inconsistent with the HMR. They specifically are inconsistent with § 177.853, which mandates that highway shipments of hazardous materials be transported without unnecessary delay.

Although the routing and time restriction issues raised in the ATA/NTTC application will be addressed in a separate inconsistency proceeding (Docket No. IRA-40B), a consequence of this ruling is that the City may not discriminate on the basis of compliance or noncompliance with the Directives found inconsistent herein. Therefore, all other issues aside, the City may not impose routing, time, escort and other restrictions on vehicles carrying hazardous materials and then exempt all Fire Department-permitted vehicles from those restrictions—as it has done in Paragraph II. D of its Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle. Such discrimination would be based on an inconsistent standard.

V. Summary

Virtually all provisions of the City's four BFP directives result in serious delays of transportation of hazardous materials, regulate areas which RSPA has defined as exclusively Federal, undermine the likelihood of compliance with the HMR, create obstacles to the accomplishment and execution of the HMTA and the HMR, are thus inconsistent with the HMTA and the HMR, and, therefore, are preempted.

VI. Ruling

For the foregoing reasons and on the basis of this record, I find that the City of New York Fire Department's Bureau of Fire Protection Directive 3-76 (except sections 13 and 16), Directive 6-76 (except section 25), Directive 7-74 (except sections 31 and 32 and Subsections 2-2 and 2-3) and Directive 5-63 (except section 7) are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). On the basis of this record, sections 13 and 16 of BFP Directive 3-76, section 25 of BFP Directive 6-76, sections 31 and 32 of BFP Directive 7-74, and Section 7 of BFP Directive 5-63 are consistent with the HMTA and the HMR. No opinion is rendered concerning subsections 2-2 and 2-3 of BFP Directive 7-74.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

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